

ORIGINAL

PUBLIC

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



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

DOCKET NO. 9361

**ORDER GRANTING CONSENT MOTION OF RESPONDENT FANNING
FOR LEAVE TO AMEND ANSWERS TO SECOND REQUEST FOR ADMISSIONS
AND TO SERVE ANSWERS LATE**

I.

On December 9, 2014, Respondent John Fanning (“Fanning”) filed an Assented to Motion for Leave to Amend Answers to Second Request for Admissions and to Serve Answers Late (“Motion”). Federal Trade Commission (“FTC”) Complaint Counsel has not responded to the Motion. As set forth below, the Motion is GRANTED.

II.

Fanning states that he was served with Complaint Counsel’s second request for admissions (“RFAs”) on November 4, 2014, but that he failed to submit his responses during the 10-day response period allowed by FTC Rule of Practice 3.32(b) because of “extensive activity in the case,” including Fanning’s filing of his opposition to the pending Motion for Summary Decision. Fanning further states that he was unable to “keep track” of extensive emails and filings occurring during the response period. Fanning further states that he first realized the oversight of failing to respond to the RFAs on November 25, 2014, when Complaint Counsel filed a motion to supplement its Motion for Summary Decision, seeking to add facts derived from the constructive admissions resulting from Fanning’s failure to respond. By operation of Rule 3.32(b), Fanning’s failure to respond to the RFAs resulted in the subject matter of the RFAs being deemed admitted. 16 C.F.R. § 3.32(b) (“The matter is admitted unless, within ten (10) days after service of the request, . . . the party to whom the request is directed serves upon the party requesting the admission, with a copy filed with the Secretary, a sworn written answer or objection addressed to the matter.”).

Fanning asserts that upon realizing the failure, his counsel took immediate steps to complete answers to Complaint Counsel's RFAs, and served them on December 4, 2014. Fanning argues that no prejudice will result to Complaint Counsel by allowing the late filing, while Fanning will be prejudiced if he is bound by the constructive admissions.

III.

The title of Fanning's Motion states that the Motion is "assented to" and Complaint Counsel has not filed any opposition to the Motion. FTC Rule of Practice 3.22(d) provides that: "Within 10 days after service of any written motion . . . the opposing party shall answer or shall be deemed to have consented to the granting of the relief asked for in the motion." 16 C.F.R. § 3.22(d). In addition, 3.32(c) authorizes "withdrawal or amendment [of admissions] when the presentation of the merits of the proceeding will be subserved thereby and the party who obtained the admission fails to satisfy the Administrative Law Judge that withdrawal or amendment will prejudice him in maintaining his action or defense on the merits." 16 C.F.R. § 3.32(c).

Based on the foregoing, Fanning's Motion is GRANTED, and it is hereby ORDERED that Respondent Fanning's Responses to Complaint Counsel Second Requests for Admissions, served on Complaint Counsel on December 4, 2014, and attached to the Motion as Exhibit B, shall, upon filing with the Office of the Secretary as required under Rule 3.32(b), operate as a withdrawal and amendment of any prior admissions of Fanning, pursuant to Rule 3.32(c).

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: December 23, 2014