

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

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

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

ORDER SCHEDULING BRIEFING ON REMAND

On May 9, 2016, the United States Court of Appeals for the First Circuit issued an opinion affirming “the Commission’s entry of summary decision as to liability [in this proceeding] and all provisions of its remedial order except for compliance monitoring as to Fanning.” *Fanning v. Federal Trade Commission*, 821 F.3d 164, 177-78 (1st Cir. 2016). The court vacated and remanded that single portion of the Commission’s order for further proceedings consistent with the court’s opinion. *Id.* at 178. The court’s judgment was entered on May 9, 2016, and, no petition for rehearing or for *certiorari* having been filed, this proceeding is now pending before the Commission on remand.

The court’s remand applies to a single paragraph of the Commission’s Final Order issued on March 13, 2015. Paragraph VI of that Order reads, in relevant part:

**VI.
COMPLIANCE MONITORING – JOHN FANNING**

IT IS FURTHER ORDERED that respondent John Fanning, for a period of ten (10) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his current business or employment, or of his affiliation with any new business or employment. The notice shall include respondent’s new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities.

The court of appeals stated that this provision requires Mr. Fanning to “notify the Commission of all business affiliations and employment – regardless of whether or not the affiliate or employer has responsibilities relating to the order.” *Fanning*, 821 F.3d at 177. It explained that, “[w]ithout any guidance from the Commission, we cannot find these provisions are reasonably related to Fanning’s violation.” *Id.* at 177.

The Commission has determined that briefing by Mr. Fanning and Complaint Counsel would assist it in resolving the issue presented on remand. Such briefing shall be confined solely to that issue remanded by the court of appeals; that is, the compliance monitoring applicable to Mr. Fanning addressed in Paragraph VI of the Commission’s Final Order. Accordingly,

IT IS ORDERED THAT:

1. On or before September 6, 2016, Mr. Fanning shall file a brief, not to exceed 2,000 words, addressing the foregoing issue regarding Paragraph VI of the Commission’s Final Order and including proposed order language;
2. On or before fourteen days after service of Mr. Fanning’s brief, Complaint Counsel may file an answering brief not to exceed 2,000 words; and
3. On or before five days after service of Complaint Counsel’s answering brief, Mr. Fanning may file a reply brief not to exceed 1,250 words.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED: August 23, 2016