

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



ORIGINAL

_____)
In the matter of:)
)
Jerk, LLC, a limited liability company,) DOCKET NO. 9361
)
Also d/b/a JERK.COM, and)
) PUBLIC
John Fanning,)
Individually and as a member of)
Jerk, LLC,)
)
Respondents.)
_____)

**MOTION OF RESPONDENT JOHN FANNING TO ENLARGE TIME
TO RESPOND TO COMMISSION'S MOTION FOR SUMMARY JUDGMENT**

Respondent John Fanning ("Fanning") requests an extension of time to file his response and opposition to the Commission's Motion for Summary Judgment, for an additional thirty (30) days up to and including November 14, 2014. In support of the extension, Mr. Fanning states as follows:

1. On September 30, 2014, Commission Counsel served and filed a complete Motion for Summary Judgment with all exhibits. (Revised Certificate of Service, at Ex. 1). Pursuant to Commission Rule 3.24, Fanning's opposition is due within fourteen (14) days of service, making October 14, 2014 the current deadline. Fanning cannot reasonably be expected to file and serve an opposition and response by October 14, 2014.

2. The Commission's Motion and supporting documentation includes as Statement of Material Facts consisting of 183 separately numbered paragraphs covering 74 pages, with references to the extensive record. The record consists of 738 "Confidential Exhibits" totaling

2080 pages of materials. The Motion is accompanied by a Memorandum of Law of 38 pages. Further, the Motion consistently lumps Fanning and Respondent Jerk, LLC together as “Respondents” throughout the pleadings, thereby requiring Fanning to discern, separate, and address the evidence submitted against him personally as opposed to Respondent Jerk, LLC. Fanning and his counsel cannot possibly review, analyze, research and properly oppose the Motion within the fourteen-day deadline.

3. Fanning also currently intends to file a cross-motion in response.

4. Requiring Fanning to respond without a reasonable extension of the deadline would be unfair and unduly prejudicial to Fanning. The Commission seeks a final adjudication against Fanning in the form of a final order, and attempts to preclude Fanning’s right to a trial on the merits wherein Fanning expected finally to have the right to confront the Commission’s evidence and the claims asserted. The Commission is seeking through its current Motion to avoid a trial that will expose its unlawful exercise of regulatory authority, and to side-step the due process rights of Fanning. This proceeding should be a search for the truth and a check on the Executive Branch through a full and complete adjudicatory action consisting of a trial on the merits. Either this Tribunal should summarily deny the Motion, or permit Fanning a full and complete opportunity to address the merits to avoid a summary adjudication of his rights without sufficient due process. The Commission will not suffer any prejudice as a result of an extension as requested to permit a proper review of the case on the merits.

5. The timing of the filing of the Motion also underscores the lack of fairness. Complaint Counsel knew that counsel for Fanning was scheduled to commence a week-long trial on an unrelated matter in Washington, DC starting September 30, 2014, so that counsel for Fanning was supposed to be unavailable for the entire week. Yet, Complaint Counsel filed and

served the extensive Motion, without any prior notice, on September 29, 2014 which was thereafter supplemented on September 30, 2014 at a time when Commission Counsel knew that counsel for Fanning was supposed to be away at trial. Fortunately, the case was resolved and trial postponed. Nonetheless, Fanning would have lost an entire week of response time if the case had not settled. Further, counsel for Fanning already advised Commission Counsel of his tight schedule filled with numerous other commitments during this period of time, including court appearances and preparation for trial commencing the first week of December 2014, and prior plans to be away over the Columbus Day Holiday. Fanning will be deprived his ability and right to present a comprehensive response and objection to the Motion without the extension. Fundamental fairness dictates that an extension is proper, and should be granted.

For the foregoing reasons, Respondent John Fanning requests an enlargement of the deadline to file a response and opposition to the Commission's Motion for Summary Judgment up to and including November 14, 2014.

Respectfully submitted,

JOHN FANNING,

By his attorneys,

/s/ Peter F. Carr, II

Peter F. Carr, II

ECKERT, SEAMANS, CHERIN & MELLOTT, LLC

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CERTIFICATE OF SERVICE

I hereby certify that on October 2, 2014, I caused a true and accurate copy of the foregoing to be served electronically through the FTC's e-filing system, and caused a true and accurate copy of the foregoing to be served as follows:

One electronic copy electronic courtesy copy to the Office of the Secretary:

Donald S. Clark, Secretary
Federal Trade Commission
600 Pennsylvania Ave., N.W., Room H-159
Washington, DC 20580
Email: secretary@ftc.gov

One paper copy and 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: oalj@ftc.gov

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

Sarah Schroeder
Federal Trade Commission
901 Market Street, Suite 670
San Francisco, CA 94103
Email: sschroeder@ftc.gov

/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

Dated: October 2, 2014

EXHIBIT 1

REVISED CERTIFICATE OF SERVICE

I hereby certify that on September 29, 2014, I served a true and correct copy of (1) COMPLAINT COUNSEL'S MOTION FOR SUMMARY DECISION; (2) COMPLAINT COUNSEL'S STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE FOR TRIAL, and accompanying exhibits; and (3) PROPOSED ORDER on:

The Office of the Secretary:

Donald S. Clark
Office of the Secretary
600 Pennsylvania Avenue, N.W.
Room H-172
Washington, D.C. 20580

The Office of the Administrative Law Judge

D. Michael Chappell
Chief Administrative Law Judge
600 Pennsylvania Avenue, N.W.
Room H-106
Washington, D.C. 20580

Jerk, LLC:

P.O. Box 277
Hingham, MA 02043

I hereby certify that on September 29, 2014, I served a true and correct copy of (1) COMPLAINT COUNSEL'S MOTION FOR SUMMARY DECISION; (2) COMPLAINT COUNSEL'S STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE FOR TRIAL; and (3) PROPOSED ORDER on:

Counsel for John Fanning:

Peter F. Carr, II
Eckert, Seamans, Cherin & Mellott, LLC
Two International Place, 16th Floor
Boston, MA 02110
Phone: (617) 342-6800
Email: pcarr@eckertseamans.com

I hereby certify that on September 30, 2014, I served a true and correct copy of the exhibits accompanying Complaint Counsel's Motion for Summary Judgment on **Counsel for John Fanning:**

Peter F. Carr, II
Eckert, Seamans, Cherin & Mellott, LLC
Two International Place, 16th Floor
Boston, MA 02110
Phone: (617) 342-6800
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Date: September 30, 2014



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