

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



ORIGINAL

\_\_\_\_\_)  
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

**RESPONSE OF JERK, LLC TO COMPLAINT COUNSEL'S COMBINED (1) OPPOSITION TO JERK, LLC'S MOTION FOR LEAVE AND (2) MOTION TO STRIKE JERK, LLC'S UNTIMELY FILINGS**

Now comes Jerk, LLC ("Jerk"), in response to Complaint Counsel's Combined (1) Opposition to Jerk, LLC's Motion for Leave and (2) Motion to Strike Jerk, LLC's Untimely Filings. As grounds therefore, Jerk states that entry of Complaint Counsel's proposed order would significantly prejudice Jerk, but need not cause any harm to the FTC.

1. Complaint Counsel's argument that Jerk, LLC "does not stand to suffer any meaningful prejudice from having its Opposition stricken"<sup>1</sup> is plainly illogical. As Complaint Counsel correctly states, a party that does not respond to an opposing party's

<sup>1</sup> Complaint Counsel's Combined (1) Opposition to Jerk, LLC's Motion for Leave and (2) Motion to Strike Jerk, LLC's Untimely Filings, p. 5 fn. 8 (Feb. 27, 2015).

written motion within ten days of service “shall be deemed to have consented to the relief asked for in the motion.”<sup>2</sup> 16 C.F.R. § 3.22 (d). Here, where Complaint Counsel’s Motion for Sanctions seeks a default decision against Jerk, if the Court does not consider Jerk’s Opposition as timely filed then Jerk indeed suffers the ultimate prejudice of a final disposition against it without the opportunity to defend itself.

2. Complaint Counsel further asserts that it will be prejudiced by any delay in the Court’s ruling on its Motion for Sanctions that may be caused by Jerk’s late filing of its Opposition. As an initial matter, any harm caused to complaint counsel by the eight day delay would be minimal at best, particularly given the number of experienced lawyers handling this case who would be reviewing the evidence. Moreover, there is no reason why complaint counsel cannot be afforded a short extension of time to properly prepare.

3. Complaint Counsel’s further assertion that counsel for Jerk “acknowledg[ed] that Jerk has no valid reason for its delinquency”<sup>3</sup> blatantly mischaracterizes what counsel actually stated in her Declaration in support of Jerk’s opposition to Complaint Counsel’s Motion for Sanctions. Counsel for Jerk merely conceded that lack of legal representation does not – in and of itself – permit a party to ignore discovery deadlines. There are, however, several other factors to consider.<sup>4</sup> For instance, Complaint Counsel puts forth no

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<sup>2</sup> Complaint Counsel’s Combined (1) Opposition to Jerk, LLC’s Motion for Leave and (2) Motion to Strike Jerk, LLC’s Untimely Filings, p. 3 (Feb. 27, 2015).

<sup>3</sup> Complaint Counsel’s Combined (1) Opposition to Jerk, LLC’s Motion for Leave and (2) Motion to Strike Jerk, LLC’s Untimely Filings, p. 4 fn.6 (Feb. 27, 2015).

<sup>4</sup> See *Emerson v. Thiel College*, 296 F.3d 184 (3rd Cir. 2002) (To determine whether the District Court abused its discretion, we evaluate its balancing of the following factors: (1) the extent of the party’s personal responsibility; (2) the prejudice to the adversary caused by the failure to meet scheduling orders and respond to discovery; (3) a history of dilatoriness; (4) whether the conduct of the party or the attorney was willful or in bad faith; (5) the effectiveness of sanctions other than dismissal, which entails an analysis of alternative sanctions; and (6) the

evidence that Jerk or its counsel has acted in bad faith in this case. In addition, and previous delays can be easily cured at this point, particularly where Jerk has offered a representative who is available to be deposed at any time.<sup>5</sup>

Respectfully Submitted,

JERK, LLC,

By its Attorney,

/s/ Alexandria B. Lynn

Alexandria B. Lynn  
48 Dartmouth Street  
Watertown, MA 02472  
(617) 631-8781

Dated: March 5, 2015

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meritoriousness of the claim or defense) (citing *Poulis v. State Farm Fire and Cas. Co.*, 747 F.2d 863, 868 (3d Cir.1984)).

<sup>5</sup> An Affidavit of Jerk's representative, Titus Robinson, is attached and presents a brief summary of the testimony he can offer in Jerk's defense.

## AFFIDAVIT OF TITUS ROBINSON

I, Titus Robinson, upon my own personal knowledge, under oath hereby depose and state as follows:

1. I was an independent contractor to Jerk, LLC. I am a legal citizen of India, where I currently reside and where I resided during my work on behalf of Jerk. I performed a number of services for and on behalf of Jerk, including identifying and working with Jerk.com developer contractors in India and Romania, trying to raise money to support the Jerk.com project, and handling some electronic communications for Jerk.

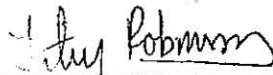
2. I was familiar with the many features and the policies of the Jerk.com website. In particular, I became familiar with the "Post a Story" feature on Jerk.com, which, as the name implies, allowed any member of the public to post a story on the site. Users would frequently include links to other websites in their stories, including links to various pages on the facebook.com website. Whenever a link led to a webpage that included any person's name along with that person's photo, Jerk.com automatically created a profile for that person. That profile would not contain any votes as to whether the person associated with that profile was a "Jerk" or "Not a Jerk" until a user of the site cast one.

3. At some point around 2011, Jerk received an email from somebody with the internet nickname "Hacked By Dangerous" stating that he or she was working on behalf of the FTC in order to shut down the Jerk.com website. As far as I know, no one at Jerk responded to this email. In the weeks following, "Hacked By Dangerous" created profiles on Jerk.com

that displayed sexually explicit images, some including such images of children. Jerk.com made every effort to remove all such profiles as soon as it became aware of them. I do not know whether "Hacked By Dangerous" created those profiles using the "Post a Story" feature or whether he or she hacked into the website. It is my understanding that, shortly thereafter, the FTC told Jerk that its goal was not to correct errors or remove sexually explicit images from the website, but to shut down jerk.com.

4. I learned that the FTC had filed a legal case against Jerk. Sometime in mid-December, 2014, I received a phone call from lawyers for Jerk who asked me to come to the United States and testify in the FTC case. I felt I had sufficient knowledge about Jerk to be able to offer testimony, and so I agreed. Before doing so, however, I needed to obtain a visa to travel to the United States. I received my visa on January 21, 2015, and I entered the United States on January 22, 2015 to assist and be available on behalf of Jerk.

SWORN TO AND SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 6TH DAY OF MARCH IN THE YEAR 2015.



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Titus Robinson

Notice of Electronic Service for Public Filings

**I hereby certify that on March 06, 2015, I filed via hand a paper original and electronic copy of the foregoing Response to CC's Motion to Strike , with:**

D. Michael Chappell  
Chief Administrative Law Judge  
600 Pennsylvania Ave., NW  
Suite 110  
Washington, DC, 20580

Donald Clark  
600 Pennsylvania Ave., NW  
Suite 172  
Washington, DC, 20580

**I hereby certify that on March 06, 2015, I filed via E-Service of the foregoing Response to CC's Motion to Strike , with:**

Sarah Schroeder  
Attorney  
Federal Trade Commission  
sschroeder@ftc.gov  
Complaint

Yan Fang  
Attorney  
Federal Trade Commission  
yfang@ftc.gov  
Complaint

Kerry O'Brien  
Attorney  
Federal Trade Commission  
kobrien@ftc.gov  
Complaint

Maria Speth  
Attorney  
Jaburg & Wilk, P.C.  
mcs@jaburgwilk.com  
Respondent

Boris Yankilovich  
Attorney  
Federal Trade Commission  
byankilovich@ftc.gov  
Complaint

Kenneth H. Abbe  
Attorney  
Federal Trade Commission  
kabbe@ftc.gov  
Complaint

**I hereby certify that on March 06, 2015, I filed via other means, as provided in 4.4(b) of the foregoing Response to CC's Motion to Strike , with:**

Alexandria Lynn  
Alexandria B. Lynn, Esq.  
alex.lynn@codelaw.com

Peter F. Carr, II  
Attorney  
Eckert Seamans Cherin & Mellott, LLC  
pcarr@eckertseamans.com  
Respondent

Alexandria Lynn  
Attorney