



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 DENYING WITHOUT PREJUDICE  
MOTION OF RESPONDENT JERK, LLC TO EXTEND TIME  
TO ANSWER REQUESTS FOR ADMISSIONS**

**I.**

On December 15, 2014, Respondent Jerk, LLC (“Jerk”) filed a Motion to Extend Time to Answer Complaint Counsel’s Second Request for Admissions (“Motion”). Federal Trade Commission (“FTC”) Complaint Counsel filed an opposition to the Motion on December 16, 2014 (“Opposition”). After reviewing the Motion, Opposition, and exhibits submitted therewith, and as further explained below, the Motion is DENIED WITHOUT PREJUDICE.

**II.**

Requests for Admissions are authorized pursuant to FTC Rule of Practice 3.32, 16 C.F.R. § 3.32. Rule 3.32(b) provides that the subject matter of a request is deemed “admitted unless, within ten (10) days after service of the request, or within such shorter or longer time as the Administrative Law Judge may allow, the party to whom the request is directed serves upon the party requesting the admission, . . . a sworn written answer or objection addressed to the matter.” 16 C.F.R. § 3.32(b). The Rule further provides:

Any matter admitted under this rule is conclusively established unless the Administrative Law Judge on motion permits withdrawal or amendment of the admission. The Administrative Law Judge may permit withdrawal or amendment 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).

According to the submissions of the parties, Complaint Counsel served a Second Request for Admissions (hereafter, "RFAs") on Jerk on November 4, 2014, by emailing the RFAs to Jerk's most recent counsel and by mailing a copy to Jerk's registered agent, which methods had been authorized by Order dated November 3, 2014. Jerk does not dispute that it was properly served with the RFAs and admits that it failed to respond within the ten days permitted by Rule 3.32(b). Jerk seeks an order permitting it to file its responses at this time.

### III.

Jerk states that at the time the RFAs were served, Jerk was not represented by counsel, because its counsel of record had withdrawn. According to the Motion, Jerk has now obtained new counsel, who is attempting to defend this matter on the merits, including by filing a motion with the Commission on December 9, 2014, to allow Jerk to respond to the pending Motion for Summary Decision, and to reschedule the evidentiary hearing. Jerk argues that it is manifestly prejudicial to Jerk to bind it to constructive admissions of the factual allegations of the Complaint and of legal liability, instead of allowing Jerk to respond on the merits, and that Complaint Counsel will not be unduly prejudiced by allowing Jerk to respond to the RFAs. Jerk states that it "regrets any delays or inconvenience that its failure to respond may have occasioned" and contends that it is preferable to have disputes resolved on the merits, rather than by default, which would be the effect of allowing Jerk's constructive admissions to stand. Motion at 2. In addition, Jerk argues, it is in the interests of justice and administrative economy to allow Jerk a "limited amount of time" to respond. Motion at 2.

Complaint Counsel states that Jerk should be bound by its "deemed admissions," *i.e.*, the constructive admissions resulting from the operation of Rule 3.32(b). Complaint Counsel asserts that Jerk has not participated in this action for five months, has only recently obtained new counsel, and has failed to comply with existing discovery orders. *See* Order of August 15, 2014 (ordering Jerk to produce a corporate designee in response to Complaint Counsel's Rule 3.33(c)(1) deposition notice to Jerk); Order of November 25, 2014 (granting Complaint Counsel's Motion to Compel Jerk to respond to outstanding interrogatories and document requests). Complaint Counsel further asserts that Jerk has provided no justification for its delay in responding to the request for admissions.

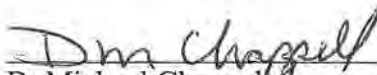
Complaint Counsel argues, first, that Jerk has not demonstrated, as required for withdrawal or amendment of admissions under Rule 3.32(c), that "the merits of the action will be subserved" by allowing Jerk to provide answers to the request for admissions. Specifically, Complaint Counsel asserts that Jerk admits that it plans to use answers to admissions to oppose the pending Motion for Summary Decision and will rely on such

answers, including denials of requested admissions, to conduct new discovery, even though the deadline for completing fact discovery has passed. Complaint Counsel contends that this proceeding will “become subsumed by countless requests to excuse Jerk’s delinquencies” on other outstanding discovery requests with which Jerk has not complied, including interrogatories and a deposition subpoena, and allow a discovery “do-over,” which will undermine the interest in commencing the hearing in accordance with the 5 months allowed by the Rules. Opposition at 5. *See* 16 C.F.R. § 3.11(b)(4) (“Unless a different date is determined by the Commission, the date of the evidentiary hearing shall be 5 months from the date of the administrative complaint . . .”). Complaint Counsel next argues that it will be prejudiced by allowing Respondent to answer the requests for admissions at this point in the proceedings, because this will allow Jerk to deny the requests and will also deprive Complaint Counsel of the ability to obtain discovery to counter the denials, because the discovery deadline has passed and the evidentiary hearing is scheduled for January 27, 2015. At the same time, Complaint Counsel notes, Jerk has effectively shielded itself from discovery, by failing to provide discovery during the discovery period.

#### IV.

Although Jerk asserts that it now has new counsel, Jerk fails to explain the reasons for its delay in retaining new counsel, or why such delay should be excused. Jerk also fails to even acknowledge, much less justify, its failure to comply with existing discovery orders. Accordingly, the relief requested by Jerk will not be granted at this time. Jerk may, no later than December 29, 2014, renew its motion, and the request for relief will be reconsidered upon showing, in addition to any other requirements under 3.32(c): (1) an explanation for the delay in Jerk’s obtaining new counsel, including all reasons therefor; and (2) an offer and detailed plan to promptly comply with the orders of August 15 and November 25, 2014. Accordingly, the Motion is DENIED WITHOUT PREJUDICE.

ORDERED:

  
D. Michael Chappell  
Chief Administrative Law Judge

Date: December 22, 2014