

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

**COMMISSIONERS:**        **Edith Ramirez, Chairwoman**  
                                 **Julie Brill**  
                                 **Maureen K. Ohlhausen**  
                                 **Joshua D. Wright**  
                                 **Terrell McSweeney**

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<b>In the Matter of</b>	)	
	)	
	)	
<b>Jerk, LLC, a limited liability company,</b>	)	
<b>also d/b/a JERK.COM, and</b>	)	<b>Docket No. 9361</b>
	)	
<b>John Fanning,</b>	)	
<b>individually and as a member of</b>	)	
<b>Jerk, LLC.</b>	)	

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**ORDER EXTENDING THE TIME FOR JERK, LLC TO RESPOND TO  
THE MOTION FOR SUMMARY DECISION AND RESCHEDULING THE  
EVIDENTIARY HEARING BEFORE THE ADMINISTRATIVE LAW JUDGE**

On September 29, 2014, Complaint Counsel moved for summary decision on the claims against Respondents Jerk, LLC (“Jerk”) and John Fanning. The Commission extended the time for Respondents to oppose the Motion for Summary Decision to November 4, and Mr. Fanning opposed the motion but Jerk did not. On November 12, Complaint Counsel filed a reply, and Mr. Fanning filed a surreply on November 19. Subsequently, on December 8, Jerk reappeared and filed a “Motion to Extend the Time to Respond to Motion for Summary Decision, and to Reschedule the Evidentiary Hearing.” Complaint Counsel has opposed this motion.

Jerk argues that it fully participated in this case until July 2014, when its prior attorney terminated her representation. Jerk asserts that it had difficulty finding another attorney and was unrepresented until December 2, 2014, when it retained new counsel. Jerk Mot. at 2. Jerk contends that the Commission should vacate any findings or admissions entered against it by default and allow it to respond to the Motion for Summary Decision on the merits. Specifically, Jerk seeks to: (1) extend the deadline for its opposition to Complaint Counsel’s Motion for Summary Decision to a date on or after January 26, 2015; (2) postpone the Commission’s decision until after Jerk’s response; and (3) reschedule the evidentiary hearing before the Administrative Law Judge to a date on or after March 2, 2015. In the alternative, Jerk requests ten days to respond to Complaint Counsel’s Motion for Summary Decision without changing the date of the evidentiary hearing. *Id.* at 1-2, n.2. Jerk argues that no party would be unduly prejudiced by a changed schedule because it no longer operates jerk.com or any other website; thus, there would be no detriment to consumers or the public. *Id.* at 3.

Complaint Counsel opposes Jerk's motion, contending that Jerk offers no valid reason for its delay. Opp. at 3-5. Complaint Counsel observes that Jerk "effectively disappeared from the case for the majority of the discovery period, ignoring multiple deadlines, motions, and orders, including Chief Judge Chappell's express warning that 'Jerk remains a party in this case and is not entitled to ignore a discovery motion.'" *Id.* at 4. In addition, Complaint Counsel argues that it will be prejudiced because it will be forced to respond to Jerk's opposition without the benefit of discovery. *Id.* at 5-6. Complaint Counsel also asserts that permitting delay would thwart the Commission's preference for expeditious administrative litigation. *Id.* at 6-7.

Jerk's failure to respond to discovery requests and other obligations cannot be excused simply because it had a difficult time finding legal representation. However, the consequences of denying leave to file an opposition to the Motion for Summary Decision in this matter would be extraordinarily severe. In addition, we are cognizant of the preference for having disputes resolved on their merits, and believe the circumstances here justify granting a limited time for Jerk to file a response. Accordingly, to ensure that the Commission may fully consider the merits of this matter, we grant Jerk, LLC until January 5, 2015 to respond to Complaint Counsel's Motion for Summary Decision.<sup>1</sup> Because this will necessarily delay a decision on the motion, the hearing before the Administrative Law Judge is rescheduled to begin on March 23, 2015.

As Complaint Counsel observes, no party has sought to reopen discovery in this case. Opp. at 6. Nonetheless, Complaint Counsel has rightly questioned the fairness of having to address Jerk's opposition after Jerk was entirely unresponsive during the discovery period. *Id.* We agree that Jerk should not be permitted to ignore its discovery obligations, particularly in light of Judge Chappell's numerous orders compelling interrogatory responses, production of documents, and appearance for depositions. Such discovery issues are properly addressed by the ALJ upon motions by the parties. In addition, the Administrative Law Judge may issue a revised scheduling order to account for the rescheduled hearing date.

Accordingly,

**IT IS ORDERED THAT** Respondent Jerk, LLC may file its response to Complaint Counsel's Motion for Summary Decision on or before January 5, 2015; and

**IT IS FURTHER ORDERED THAT** the hearing before the Administrative Law Judge of the Federal Trade Commission on the charges set forth in the Complaint will begin on March 23, 2015.

By the Commission.

Donald S. Clark  
Secretary

SEAL:  
ISSUED: December 22, 2014

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<sup>1</sup> We note that our ruling is limited to Jerk.com and should not be interpreted as an invitation for Mr. Fanning to file additional submissions. He has already filed an opposition and surreply to Complaint Counsel's Motion for Summary Decision.