

UNITED STATES OF AMERICA
BEFORE THE 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.))
_____))

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**COMPLAINT COUNSEL’S OPPOSITION TO
RESPONDENT JERK, LLC’S MOTION TO EXTEND TIME TO
RESPOND TO THE COURT’S ORDER OF DECEMBER 22, 2014**

Despite being given a second chance by the Court, Respondent Jerk, LLC (“Jerk”) has continued its dilatory conduct in this case by again requesting an extension to comply with the Court’s orders. On December 22, the Court issued a clear directive that “Jerk may, no later than December 29, 2014,” renew its motion for an extension provided that it explain its delay in obtaining new counsel and offer a detailed plan to promptly comply with the Court’s discovery orders. Rather than obey this straightforward order, Jerk has requested an additional week to file a renewed motion for an extension. *Motion of Respondent Jerk, LLC, to Extend Time to Respond to the Court’s Order of December 22, 2014*, filed December 29, 2014 (“Jerk’s Motion to Extend Time”). In so doing, Jerk has failed to offer a reasonable cure for the prejudice that its obstructionist conduct has caused and continues to cause Complaint Counsel. The Court should cease entertaining Jerk’s extension requests and deny Jerk’s motion.

I. LEGAL STANDARD

Commission Rules provide that “[f]or good cause shown, the Administrative Law Judge may, in any proceeding before him or her: (1) Extend any time limit prescribed or allowed by order of the Administrative Law Judge” 16 C.F.R. § 4.3(b). The Federal Rules similarly prescribe the “good cause” standard. Fed. R. Civ. P. 6(b). “To demonstrate good cause, a party must show that despite its diligence, the time table could not reasonably have been met.”

Hartford v. Schindler Elevator Corp., 2011 U.S. Dist. LEXIS 138637, at *4 (N.D. Ind. Dec. 1, 2011). Failure to comply with a deadline due to a holiday is not good cause. *Ott v. Federal Home Loan Mortgage Corporation*, 535 Fed. Appx. 488, at * 2 (6th Cir. 2013) (party should have known that the Fourth of July was part of the deadline period). Recognizing that trial courts control their dockets and that “rules are rules,” appellate courts review extension decisions for abuse of discretion. *See Mendez v. Banco Popular de Puerto Rico*, 900 F.2d 4, 7 (1st Cir. 1990) (“a district judge must often be firm in . . . demanding adherence to announced deadlines. If he or she sets a reasonable due date, parties should not be allowed casually to flout it or painlessly to escape the foreseeable consequences of noncompliance”).

II. JERK HAS NOT DEMONSTRATED GOOD CAUSE FOR ITS FAILURE TO COMPLY WITH THE COURT’S DECEMBER 22 ORDER

Jerk asserts that it needs an additional week to comply with the Court’s December 22 Order due to “the December holidays and the revised hearing dates.”¹ Jerk’s Motion to Extend Time at 1. Jerk offers no further explanation for its inability to comply with the Court’s order. The Court was aware of the December holidays when it issued its Order and gave Jerk a week to file a renewed motion. The information that Jerk was required to provide by December 29 – an explanation for its delay in obtaining new counsel and a plan to promptly comply with the

¹ Granting Jerk a one-week extension would severely prejudice Complaint Counsel, who will be responding to Jerk’s opposition to the summary judgment motion during the same time period.

Court's orders – is not complicated or time-consuming to assemble. If Jerk was serious about coming into compliance with the Court's orders, it would not have violated yet another Court order. It also would not have waited until the last possible moment to file a request for an extension. Accordingly, Jerk has not demonstrated good cause in seeking an extension of time. *See, e.g., Maldonado-Denis v. Castillo-Rodriguez*, 23 F.3d 576, 584-85 (1st Cir. 1994) (upholding denial of an extension because the requesting party had caused many delays to the proceedings and had shown little respect for the Court).

III. GRANTING JERK ANOTHER EXTENSION WOULD REWARD JERK'S DILATORY BEHAVIOR

Granting the extension that Jerk now seeks would reward Jerk's dilatory behavior in this action. Jerk has provided no justification for its failure to respond to Complaint Counsel's discovery. Nor has it explained in any way why it has been unable to respond to the Court's various discovery orders. To be clear, this motion is a request to extend time to file a motion for relief from an earlier missed deadline. At some point, Jerk must be held accountable for continuing to miss deadlines under the Scheduling Order and the orders of the Court. *O'Connell v. Hyatt Hotels of Puerto Rico*, 357 F.3d 152, 155 (1st Cir. 2004) ("litigants cannot be permitted to treat a scheduling order as a 'frivolous piece of paper idly entered, which can be cavalierly disregarded without peril.'") As Complaint Counsel has previously argued, "[t]his proceeding will become subsumed by countless requests to excuse Jerk's delinquencies on other matters, undermining the Commission's objective for speedy litigation." *Complaint Counsel's Opposition to Jerk's Motion to Extend Time to Answer Complaint Counsel's Second Request for Admissions* (December 16, 2014), p. 5. That is exactly what is happening here with Jerk's latest request.

IV. CONCLUSION

For the foregoing reasons, the Court should deny Jerk's motion.

Dated: December 30, 2014

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on December 30, 2014, I served a true and correct copy of Complaint Counsel's Opposition to Respondent Jerk, LLC's Motion to Extend Time to Respond to the Court's Order of December 22, 2014 on:

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Dated: December 30, 2014



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