

Aquaforest TIFF Junction Evaluation

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,

Respondents.



ORIGINAL
Docket No. 9361

MOTION OF RESPONDENT JERK, LLC, TO EXTEND TIME
TO ANSWER COMPLAINT COUNSEL'S SECOND REQUEST FOR ADMISSIONS

Respondent Jerk, LLC (hereinafter "Jerk") hereby moves, pursuant to Rules 3.32(b) and (c) and the Commission's Order of December 5, 2014, that this Honorable Court extend the time for Jerk to answer Complaint Counsel's Second Request for Admissions to 5:00 P.M. Eastern Time, December 19, 2014, and therefore to relieve Jerk from its admissions due to its failure to respond in a timely fashion. As reasons therefor, Jerk states as follows.

At the time the Request for Admissions (appended hereto as Exhibit A) was served, Jerk was unrepresented by counsel in this matter. Jerk recognizes the difficulties presented by the withdrawal of its counsel, which this Court has previously addressed. Undersigned counsel is attempting to bring Jerk into compliance with its obligations under the Rules. As stated in Jerk's recent Motion addressed to the Commission, it seeks an opportunity to defend this matter on the merits. At this time, inquiries are being made in order to be able to respond fully to the Request for Admissions within a short time frame. Jerk requests five business days to file and serve answers to the Request for Admissions. At present, Jerk is deemed to have conclusively admitted all of the factual allegations in the Complaint, as well as legal liability for having

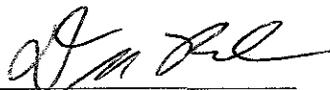
violated Section 5(a) of the Federal Trade Commission Act. The undue prejudice from these admissions is manifest. In contrast, Complaint Counsel will not be prejudiced unduly by the late answers; Jerk seeks only an opportunity to address on the merits those items it does not admit, rather than simply losing by default. Particularly pending the Commission's action on Jerk's Motion to Extend Time to Respond to Motion for Summary Decision and to Reschedule Evidentiary Hearing, it is in the interests of justice and administrative economy to allow Jerk a limited amount of time to respond to the Request for Admissions.

Jerk regrets any delays or inconvenience that its failure to respond may have occasioned. However, there is a strong preference for having disputes resolved on the merits rather than by default. See, e.g. *Coon v. Grenier*, 867 F.2d 73, 76 (1st Cir. 1989) (“actions should ordinarily be resolved on their merits”); *United States v. One Parcel of Real Property*, 763 F.2d 181, 183 (5th Cir. 1985) (noting that “modern federal practice favors trial on the merits” and ordering removal of default where failure to file timely oppositions was not willful and government was not prejudiced); *Feliciano v. Reliant Tool Co., Ltd.*, 691 F.2d 653, 656 (3d Cir. 1982) (“Any doubt should be resolved in favor of the petition to set aside the [default] judgment so that cases may be decided on their merits”). Jerk understands the Commission's policy in favor of resolving administrative matters quickly, and wishes to address this matter as expeditiously as possible.

WHEREFORE, Jerk respectfully requests that this Honorable Court extend the time for Jerk to file and serve responses to Complaint Counsel's Second Request for Admissions to 5:00 P.M. Eastern Time on December 19, 2014, and permit Jerk to withdraw the admissions entered on its behalf by its failure to respond so long as it responds by that time.

Respectfully submitted,

JERK, LLC,
By its attorneys,



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Dated: December 12, 2014

CERTIFICATE OF COMPLIANCE

In accordance with Additional Provision 4 of the Scheduling Order, I, David A. Russcol, hereby certify that, on December 12, 2014, I communicated with Sarah Schroeder, Complaint Counsel, regarding this Motion in an effort in good faith to resolve or narrow the issues in dispute and was unsuccessful in doing so. Ms. Schroeder indicated that Complaint Counsel did not assent to the relief sought.



David A. Russcol

CERTIFICATE OF SERVICE

I, David A. Russcol, hereby certify that I have, on December 12, 2014, caused a copy of the foregoing document, with supporting declaration and proposed order, to be served by email on Complaint Counsel and counsel for Respondent John Fanning, and that I have filed true and correct copies thereof electronically with the Secretary of the Commission and the Office of the Chief Administrative Law Judge. In addition, I have this day caused an original and a paper copy to be delivered by Federal Express to Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, N.W., Room H-172, Washington, D.C., 20580.



David A. Russcol