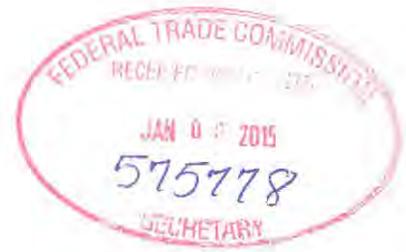


UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



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

_____)	
In the Matter of)	
)	
Jerk, LLC, a limited liability company,)	
also d/b/a JERK.COM, and)	DOCKET NO. 9361
)	
John Fanning,)	PUBLIC DOCUMENT
individually and as a member of)	
Jerk, LLC.)	
)	
_____)	

**COMPLAINT COUNSEL’S UNOPPOSED MOTION TO EXTEND TIME TO
REPLY TO RESPONDENT JERK, LLC’S OPPOSITION TO
MOTION FOR SUMMARY DECISION**

Complaint Counsel hereby respectfully request an extension of four days to file a Reply to the Opposition of Respondent Jerk, LLC (“Jerk”) to Complaint Counsel’s Motion for Summary Decision (“MSD”). Jerk filed their opposition on January 5, 2015. Under Rule 3.22(d), Complaint Counsel’s Reply to Jerk’s Opposition is currently due on January 12. Complaint Counsel seek an additional four days, until January 16, to file their Reply.

I. ARGUMENT

A. Legal Standard.

Commission Rules provide that “the Commission, for good cause shown, may extend any time limit prescribed by the rules in this chapter or by order of the Commission or an 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). An extension of time under Fed. R. Civ. P. 6(b) is appropriate when there is no showing of bad faith or that an extension would prejudice the opposing party. *Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1260 (9th Cir. 2010).

B. A Four-Day Extension Is Appropriate.

Good cause exists for granting Complaint Counsel’s request for a four-day extension to reply to Jerk’s Opposition. First, Complaint Counsel require additional time to respond to new arguments raised for the first time in Jerk’s Opposition, including the impact of the Communications Decency Act, 47 U.S.C. § 230(c)(1), on the Complaint’s allegations, as well as Jerk’s contention that summary decision should be entered in its favor. Second, Complaint Counsel find themselves pressed for time in having to reply to Jerk’s Opposition at the same time as responding to Jerk’s Response to the Administrative Law Judge’s Order of December 22, 2014 (“Jerk’s Response”), which was also filed yesterday with Chief Administrative Law Judge Chappell. Finally, this extension would permit the parties to receive Jerk’s responses to Complaint Counsel’s long outstanding interrogatories and document requests in advance of Complaint Counsel’s Reply. Jerk’s counsel has represented to Complaint Counsel that Jerk will be able to provide these responses on or before January 13.¹

An extension of four days would not prejudice opposing counsel since counsel for Jerk and Fanning do not oppose this request. This proceedings also will not be negatively affected by this brief delay, as the Commission has recently moved the evidentiary hearing date to March 23, 2015.

¹ Unfortunately, the requested extension will not afford the opportunity to obtain Jerk’s deposition testimony before Complaint Counsel’s Reply, since Jerk’s representative(s) still need to be designated and will not be deposed until the end of January. In the interest of expediency, Complaint Counsel do not wish to delay this proceeding any further by seeking a month-long extension for the Reply.

Finally, this request for an extension is made in good faith. Complaint Counsel have sought the extension promptly, a day after Jerk filed its opposition, and have not otherwise engaged in unnecessary delays or dilatory conduct in the prosecution of this action. In fact, this would be the first extension granted to Complaint Counsel in this entire proceeding.

II. CONCLUSION

For the foregoing reasons, Complaint Counsel respectfully requests that the Commission grant this unopposed motion to extend the deadline to reply to Jerk's Opposition to the MSD to January 16, 2015.

Dated: January 6, 2015

Respectfully submitted,



Sarah Schroeder
Yan Fang
Boris Yankilovich
Kenneth H. Abbe
Federal Trade Commission
Western Region – San Francisco
901 Market Street, Suite 570
San Francisco, CA 94103

COMPLAINT COUNSEL

STATEMENT CONCERNING MEET AND CONFER

In accordance with Additional Provision 4 of the Scheduling Order, Complaint Counsel communicated with Respondent Jerk, LLC's counsel, David A. Russcol and David Duncan, and Respondent John Fanning's counsel, Peter Carr, by phone on January 5, 2015, in a good faith effort to resolve by agreement the issues raised by this motion. Mr. Russcol, Mr. Duncan, and Mr. Carr indicated that they do not oppose the relief sought by this motion.

Dated: January 6, 2015

Respectfully submitted,



Sarah Schroeder
Yan Fang
Boris Yankilovich
Kenneth H. Abbe
Federal Trade Commission
Western Region – San Francisco
901 Market Street, Suite 570
San Francisco, CA 94103

COMPLAINT COUNSEL

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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Jerk, LLC, a limited liability company,)	
also d/b/a JERK.COM, and)	DOCKET NO. 9361
)	
John Fanning,)	
individually and as a member of)	
Jerk, LLC.)	
_____)	

PROPOSED ORDER

It is hereby ORDERED that:

Complaint Counsel's Unopposed Motion to Extend Time to Reply to Respondent Jerk, LLC's Opposition to Motion for Summary Judgment is GRANTED. Complaint Counsel's Reply in support of the Motion for Summary Decision shall be due on January 16, 2015..

ORDERED:

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED:

CERTIFICATE OF SERVICE

I hereby certify that on January 6, 2015, I served a true and correct copy of Complaint Counsel's Unopposed Motion to Extend Time to Reply to Respondent Jerk, LLC's Opposition to Motion for Summary Decision on:

The Office of the Secretary:

Donald S. Clark
Office of the Secretary
600 Pennsylvania Avenue, N.W.
Room H-172
Washington, D.C. 20580

The Office of the Administrative Law Judge

D. Michael Chappell
Chief Administrative Law Judge
600 Pennsylvania Avenue, N.W.
Room H-106
Washington, D.C. 20580

Counsel for John Fanning:

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Dated: January 6, 2015

Rachel Baron

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