

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES

ORIGINAL



In the Matter of	)	
	)	
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.	)	PUBLIC DOCUMENT
	)	
	)	
	)	

**COMPLAINT COUNSEL’S OPPOSITION TO  
RESPONDENT JOHN FANNING’S MOTION *IN LIMINE*  
TO EXCLUDE OR LIMIT TESTIMONY BY DEPOSITION**

Respondent John Fanning (“Fanning”) seeks a blanket exclusion of deposition testimony in this matter, even though it is expressly admissible under the Rules. The testimony Fanning asks to exclude—from Jerk investors and staffers, a consumer, a retired FTC investigator, and even Fanning himself—is relevant, material, and reliable. Fanning had a full and fair opportunity to attend these depositions (through his counsel) and lodge objections to any testimony he found objectionable. Instead, he chose to skip most of the depositions, and now, on the eve of trial, attempts to wipe the testimony from the record altogether. The Court should not permit this end run around discovery procedures under the Rules.

**I. LEGAL STANDARD**

Motions *in limine* are disfavored in this Court and “[e]vidence should be excluded in advance of trial on a motion *in limine* only when the evidence is clearly inadmissible on all

potential grounds.”<sup>1</sup> Motions *in limine* are routinely denied in administrative proceedings because “the risk of prejudice from giving undue weight to marginally relevant evidence is minimal in a bench trial such as this where the judge is capable of assigning appropriate weight to evidence.”<sup>2</sup> In fact, motions *in limine* should only be used to “ensure evenhanded and expeditious management of trials by eliminating evidence that is clearly inadmissible.” *In re Telebrands Corp.*, 2004 FTC LEXIS 270, at \*5 (F.T.C. Apr. 26, 2004); *see also In re Rambus*, 2003 WL 21223850, at \*1 (F.T.C. Apr. 21, 2003) (motions *in limine* are appropriate only in extreme circumstances where they will “eliminate plainly irrelevant evidence.”). The moving party bears the burden on motions *in limine* and must “clearly articulate[] the evidence sought to be excluded [and] the reasons therefor.” *In re Basic Research, LLC*, 2006 WL 159736, at \*8 (F.T.C. Jan. 10, 2006).

## II. ARGUMENT

Fanning’s motion *in limine* makes no argument that the deposition testimony on Complaint Counsel’s final exhibit list are “clearly inadmissible on all potential grounds.” Instead, Fanning claims that only certain unspecified portions of all of those transcripts are inadmissible. This is not a sufficient basis to exclude Complaint Counsel’s deposition transcripts.

### A. The Deposition Testimony is Relevant, Material, and Reliable.

The deposition testimony presented in Complaint Counsel’s final exhibit list is clearly relevant and material. It includes the testimony of Fanning himself,<sup>3</sup> Jerk investors (Abrams and

---

<sup>1</sup> May 28, 2014 Scheduling Order (“Scheduling Order”) ¶ 9 (emphasis in original).

<sup>2</sup> Scheduling Order ¶ 9.

<sup>3</sup> Rule 3.43(b) requires the admission of all relevant party-opponent statements. This mandates the admission of the deposition transcript of Respondent Fanning.

Amram), former Jerk and Reper staffers (Patenaude and Zinman), a consumer, and a former FTC investigator who captured the Jerk.com website (Kauffman). These witnesses testified, *inter alia*, about the content on the Jerk.com website, the true source of the profiles on Jerk.com, and Fanning's control of Jerk and his involvement in Jerk's deceptive representations. For example:

- Mr. Abrams testified that the purpose of Jerk.com was to generate revenue and that John Fanning approached him to invest in Jerk.<sup>4</sup>
- Mr. Amram testified that Jerk created user profiles by “traversing Facebook” and creating “shell profiles for people”<sup>5</sup>; that Fanning admitted to him that the force behind Jerk.com's explosive growth in profiles was obtaining the information from Facebook<sup>6</sup>; and that Fanning appeared to Mr. Amram to be “running – calling the shots” at Jerk.<sup>7</sup>
- Mr. Patenaude testified about the source of Jerk.com profiles, explaining that Jerk.com populated many of its profiles by “scraping” information from Facebook<sup>8</sup>; that a representation to Jerk.com users that all content, including the Jerk.com profiles, were created by users would be inaccurate, because some of the profiles were created through automated means<sup>9</sup>; that Fanning hired him to work on Jerk.com<sup>10</sup>; that in his work on Jerk.com, he reported only to Fanning<sup>11</sup>; that

---

<sup>4</sup> CX0109-23:19-24:10, 228:16-18 (Abrams Dep. Tr.).

<sup>5</sup> CX0181-134:20-24, 137:22-138:2 (Amram Dep. Tr.).

<sup>6</sup> *Id.* at 137:22-138:2.

<sup>7</sup> *Id.* at 103:4-16.

<sup>8</sup> CX0438-030:3-20, 056:6-12, 086:3-12 (Patenaude Dep. Tr.)

<sup>9</sup> *Id.* at 86:5-12.

<sup>10</sup> *Id.* at 10:5-11, 85:25-86:2.

Fanning was the one who paid him for his work on Jerk.com<sup>12</sup>; and that Fanning reviewed design decisions for the Jerk.com site.<sup>13</sup>

- Mr. Zinman testified that Fanning employed him<sup>14</sup>; that Jerk.com was Fanning's project<sup>15</sup>; that Reper was also Fanning's project;<sup>16</sup> that Fanning had him review Jerk.com code<sup>17</sup>; and that his impression was that Fanning owned Jerk.com.<sup>18</sup>
- Mr. Kauffman testified about his investigation into Jerk.com, including the mechanism by which consumers paid Jerk.com to become members<sup>19</sup>; and that Jerk.com did not provide him with login access to the site after he purchased a paid membership.<sup>20</sup>
- The consumer witness testified that he found a profile of himself on Jerk.com by searching for his name on Google<sup>21</sup>; that the Jerk.com profile was one of the top two results of that Google search<sup>22</sup>; that he believed that some other person had created that profile<sup>23</sup>; that he was concerned he would suffer professionally from

---

<sup>11</sup> *Id.* at 25:10-16.

<sup>12</sup> *Id.* at 10:9-11.

<sup>13</sup> *Id.* at 69:22-25.

<sup>14</sup> CX0463-8:14-24 (Zinman Dep. Tr.).

<sup>15</sup> *Id.* at 10:2-5.

<sup>16</sup> *Id.* at 12:7-9.

<sup>17</sup> *Id.* at 14:7-11.

<sup>18</sup> *Id.* at 11:7-9.

<sup>19</sup> CX0462-18:6-20:9 (Kauffman Dep. Tr.).

<sup>20</sup> *Id.* at 23:5-13.

<sup>21</sup> CX0450-8:20-11:10 (Consumer Dep. Tr.).

<sup>22</sup> *Id.* at 11:14-20.

<sup>23</sup> *Id.* at 15:21-23.

having his profile displayed on Jerk.com<sup>24</sup>; that as a result of being profiled on Jerk.com, he spent approximately 70 hours conducting research about the site in hopes of removing his profile<sup>25</sup>; and that he decided to pay for the \$30 Jerk.com membership to get the ability to edit the Jerk.com profile of him because he was concerned about the profile's impact on his small business, but after he paid, he did not get anything in return from Jerk.<sup>26</sup>

- Fanning testified about a variety of topics relating to Jerk and Jerk.com and his involvement with the company and the website, although much of his testimony consisted of his inability to recall and answer questions.<sup>27</sup>

This testimony directly bears on Complaint Counsel's allegations against Respondents. It is relevant and material.

The deposition testimony is also reliable. It was given under oath by persons testifying about topics based on their personal knowledge, perceptions, and opinions formed on the basis of knowledge and perception. There is no legitimate argument that such testimony is inherently unreliable. Yet Fanning makes one anyway. He vaguely contends that Complaint Counsel's questions elicited (unspecified) "inadmissible opinions, feelings, or impressions" from (unspecified) witnesses.<sup>28</sup> As a threshold matter, lay witness opinions and impressions are reliable and admissible. *See* Charles Wright, *et al.*, 29 Fed. Prac. & Proc. Evid. § 6255 (1st ed.) ("courts have admitted lay opinion as to . . . feelings, knowledge, intent, character, appearance

---

<sup>24</sup> *Id.* at 10:23-11:4.

<sup>25</sup> *Id.* at 18:2-20:1.

<sup>26</sup> *Id.* at 47:7-48:22, 61:8-10 (Consumer Dep. Tr.).

<sup>27</sup> *See* CX0092 (Fanning Dep. Tr.).

<sup>28</sup> Motion p. 1.

. . . and the like”). Moreover, because Fanning’s conclusory contention of unreliability fails to specify what deposition testimony is unreliable and why it is “too sweeping in scope” to sustain an *in limine* challenge. *Weiss v. La Suisse, Societe d’ Assurances sur la Vie*, 293 F. Supp. 2d 397, 407 (S.D.N.Y 2003).

**B. The Deposition Testimony is Expressly Admissible Under Rule 3.43(b).**

Fanning’s hearsay challenge to the deposition testimony is just as doomed as his relevance and reliability objections. Rule 3.43(b) expressly permits the admission of deposition testimony: “If otherwise meeting the standards for admissibility under this paragraph, depositions . . . and any other form of hearsay, shall be admissible and shall not be excluded solely on the ground that they are or contain hearsay.” Fanning apparently recognizes this Rule, but still argues against the admission of (unspecified) deposition testimony on the basis that it includes “hearsay statements, information derived from various internet sources, or documents that are not independently admissible.”<sup>29</sup> Especially where Fanning fails to identify any specific testimony or document that he believes remains objectionable notwithstanding Rule 3.43’s permissive scope, his speculative concerns do not form the basis for exclusion.

**C. Fanning’s Request for Default Wholesale Exclusion is Inappropriate.**

Perhaps recognizing the weakness of his broad and vague request, Fanning proposes a fallback position. He asks the Court to exclude all deposition testimony at the outset, and then shift the burden to Complaint Counsel to seek, designate, and justify the inclusion of specific deposition testimony, at which point Fanning will get another opportunity to object.<sup>30</sup> In other words, Fanning wants exclusion of all deposition testimony as the default rule, and case-by-case inclusion as the exception. That is not how the Rules work. Rule 3.43(b) is clear that deposition

---

<sup>29</sup> Motion p. 1.

<sup>30</sup> Motion p. 2.

testimony is *included* as a default. The Scheduling Order in this case is consistent; it does not require a proponent of deposition testimony to designate specific portions for inclusion in the record.<sup>31</sup>

Moreover, Rule 3.33(d) is clear that objections to testimony should be made during the taking of the deposition. Although Rule 3.33(g)(2) preserves objections as to competency, relevancy, or materiality, objections as to any other issue, such as hearsay or other reliability concerns, are waived unless made at the deposition.

Fanning had notice of and fair opportunity to examine and lodge objections to the testimony of the deposition witnesses. But he chose not to attend most of the depositions.<sup>32</sup> Fanning should not be allowed to use a motion *in limine* to excise all this testimony on vague and generalized concerns, especially when he did not bother to attend the depositions and object to any testimony in the first place. The point of discovery is to narrow and hone the issues for trial, not to ignore all the gathered evidence and start from scratch at trial.

As the Court recently held in *LabMD*, the appropriate procedure for objecting to specific deposition testimony is to include all deposition testimony at the outset, and see what specific objections remain after the evidentiary hearing, which can be made in post-trial briefs. There is no reason to deviate from this sensible procedure here.<sup>33</sup>

---

<sup>31</sup> Scheduling Order p. 2 “Complaint Counsel provides to Respondents’ Counsel its final proposed witness and exhibit lists, including depositions . . . .”

<sup>32</sup> See Declaration of Kelly Ortiz (“Ortiz Declaration”), appended hereto, at ¶¶ 2-6.

<sup>33</sup> See *In re LabMD, Inc.*, Transcript of Final Prehearing Conference (May 15, 2014), 39:7-40:5, appended hereto as Attachment I to the Ortiz Declaration (“just so everybody is clear, submit the entire deposition transcript for any witness whose testimony you want to submit by deposition”).

**III. CONCLUSION**

For the reasons stated above, the Court should deny Respondent Fanning's motion *in limine* to exclude or limit testimony by deposition.

Dated: March 13, 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

**CERTIFICATE OF SERVICE**

I hereby certify that on March 13, 2015, I served a true and correct copy of Complaint Counsel's Opposition to Respondent John Fanning's Motion *in Limine* to Exclude or Limit Testimony by Deposition 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:**

Peter F. Carr, II  
Eckert, Seamans, Cherin & Mellott, LLC  
Two International Place, 16<sup>th</sup> Floor  
Boston, MA 02110  
Email: pcarr@eckertseamans.com

**Counsel who have entered an appearance for Jerk, LLC:**

David Duncan  
David Russcol  
Zalkind Duncan & Bernstein LLP  
65A Atlantic Ave.  
Boston, MA 02110  
Email: dduncan@zalkindlaw.com;  
drusscol@zalkindlaw.com

Maria Crimi Speth  
Jaburg & Wilk, P.C.  
3200 N. Central Avenue, Suite 2000  
Phoenix, AZ 85012  
Email: [mcs@jaburgwilk.com](mailto:mcs@jaburgwilk.com)

Alexandria B. Lynn  
48 Dartmouth Street  
Watertown, MA 02472  
Email: [ab.lynn@outlook.com](mailto:ab.lynn@outlook.com)

Dated: March 13, 2015



Kelly Ortiz  
([kortiz@ftc.gov](mailto:kortiz@ftc.gov))  
Federal Trade Commission  
901 Market Street, Suite 570  
San Francisco, CA 94103  
Phone: 415-848-5100  
Fax: 415-848-5184

**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.	)	DOCKET NO. 9361
	)	PUBLIC
	)	
	)	

**DECLARATION OF KELLY ORTIZ  
IN SUPPORT OF COMPLAINT COUNSEL’S OPPOSITION TO RESPONDENT JOHN  
FANNING’S MOTION *IN LIMINE* TO EXCLUDE OR LIMIT TESTIMONY BY  
DEPOSITION**

In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the following is true and correct:

1. I am over 18 years of age, and I am a citizen of the United States. I am employed by the Federal Trade Commission (“FTC”) as a Federal Trade Investigator in the FTC’s Western Regional Office in San Francisco. I have worked and continue to work as an investigator for Complaint Counsel in the above-captioned matter, and I have personal knowledge of the facts set forth herein.

2. On May 28, 2014, Complaint Counsel provided notice to Respondents by emailing copies of the Subpoenas *Ad Testificandum* for Joe Abrams’ deposition scheduled for June 18, 2014, and Yosi Amram’s deposition scheduled for July 14, 2014. Attachment A to this declaration is a true and correct copy of the transmittal email with the respective attachments. Respondents’ counsel made an appearance at the Joe Abrams deposition. Respondents’ counsel did not make an appearance for the Yosi Amram deposition.

3. On June 24, 2014, Complaint Counsel provided notice to Respondents by emailing a copy of the Subpoena *Ad Testificandum* for Mr. Patenaude's deposition scheduled for August 11, 2014. Attachment B to this declaration is a true and correct copy of the transmittal email with the respective attachment. Respondents' counsel did not make an appearance for this deposition.

4. On September 16, 2014, Complaint Counsel provided notice to Respondents by emailing a copy of the Subpoena *Ad Testificandum* for Maria Crimi Speth's deposition scheduled for October 7, 2014. Attachment C and D to this declaration are true and correct copies of the transmittal emails with the respective attachment. Counsel for John Fanning made an appearance for this deposition. Counsel for Jerk, LLC did not make an appearance for this deposition.

5. On October 7, 2014, Complaint Counsel provided notice to Respondents via email and FedEx of the Subpoena *Ad Testificandum* for Mr. Zinman's deposition scheduled for November 17, 2014. Attachment E to this declaration is a true and correct copy of the transmittal email with the respective attachment. Attachment F to this declaration is a true and correct copy of the FedEx label to Jerk LLC's registered agent. Respondents' counsel did not make an appearance for this deposition.

6. On October 7, 2014, Complaint Counsel provided notice to Respondents via secure FTP and FedEx of the Subpoenas *Ad Testificandum* for Craig Kauffman's deposition scheduled for November 14, 2014, and a consumer's deposition scheduled for November 3, 2014. Attachment G to this declaration is a true and correct copy of the secure FTP with the respective attachments. Attachment H to this declaration is a true and correct copy of the FedEx label to Jerk LLC's registered agent. Respondents' counsel did not make an appearance for either of these depositions.

7. Attached hereto as Attachment I is a true and correct copy of pages 37-40 of the transcript for the final prehearing conference of *In re LabMD, Inc*, Docket No. 9357.

Executed on March 12, 2015, in San Francisco, CA.



Kery Ortiz

## **ATTACHMENT A**

**To:** 'mcs@jaburgwilk.com'[mcs@jaburgwilk.com];  
'pcarr@eckertseamans.com'[pcarr@eckertseamans.com]  
**Cc:** Schroeder, Sarah[SSCHROEDER@ftc.gov]; O'Brien, Kerry[KOBRIEN@ftc.gov]; Yankilovich,  
Boris[byankilovich@ftc.gov]; Fang, Yan[yfang@ftc.gov]  
**From:** Burke, Beatrice  
**Sent:** Wed 5/28/2014 3:49:07 PM  
**Importance:** Normal  
**Subject:** Docket 9361-Jerk, LLC. et al. - Subpoena Ad Testificandum's  
[SubpoenaAdTestificandum\\_Amram.pdf](#)  
[SubpoenaAdTestificandum\\_Amram2.pdf](#)  
[SubpoenaAdTestificandum\\_Lardas.pdf](#)  
[SubpoenaAdTestificandum\\_Abrams.pdf](#)

Dear Counsel,

Please see attached copies of Complaint Counsel's Subpoena Ad Testificandum  
Deposition's served today.

Best regards,

Beatrice Burke

Paralegal

Western Region - San Francisco

U.S. Federal Trade Commission

901 Market St., Suite 570

San Francisco, CA 94103

(415) 848-5183

[bburke@ftc.gov](mailto:bburke@ftc.gov)



# SUBPOENA AD TESTIFICANDUM DEPOSITION

Provided by the Secretary of the Federal Trade Commission, and  
Issued Pursuant to Rule 3.34(a), 16 C.F.R. § 3.34(a) (2010)

1. TO Joseph Yosi Amram 	2. FROM  UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION
---	---

This subpoena requires you to appear and give testimony at the taking of a deposition, at the date and time specified in Item 5, and at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

3. PLACE OF DEPOSITION  Federal Trade Commission 901 Market Street, Suite 570 San Francisco, CA 94103	4. YOUR APPEARANCE WILL BE BEFORE FTC Attorney or other designated counsel  5. DATE AND TIME OF DEPOSITION <i>June 17, 2014 09:00 A.M.</i>
---	--

6. SUBJECT OF PROCEEDING  In the Matter of Jerk, LLC et al., Docket No. 9361	
--	--

7. ADMINISTRATIVE LAW JUDGE  Chief Administrative Law Judge D. Michael Chappell  Federal Trade Commission Washington, D.C. 20580	8. COUNSEL AND PARTY ISSUING SUBPOENA Sarah Schroeder, Complaint Counsel Federal Trade Commission 901 Market Street, Suite 570 San Francisco, CA 94103 (415) 848-5100
---	--

DATE SIGNED <i>5/28/14</i>	SIGNATURE OF COUNSEL ISSUING SUBPOENA 
-------------------------------	--

### GENERAL INSTRUCTIONS

#### APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

#### MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

#### TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to Counsel listed in Item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Counsel listed in Item 8.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

**RETURN OF SERVICE**

*I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)*

- in person.*
- by registered mail.* By Federal Express overnight mail, pursuant to Rule 4.4(a)(2) of the Federal Trade Commission's Rules of Practice.
- by leaving copy at principal office or place of business, to wit:*

*on the person named herein on:*

*May 28, 2014*  
(Month, day, and year)

*Beatrice Burke*  
(Name of person making service)

*Paralegal*  
(Official title)



# SUBPOENA AD TESTIFICANDUM DEPOSITION

Provided by the Secretary of the Federal Trade Commission, and  
Issued Pursuant to Rule 3.34(a), 16 C.F.R. § 3.34(a) (2010)

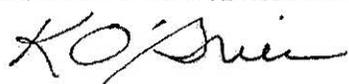
1. TO  Joseph Yosi Amram 	2. FROM  UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION
---	---

This subpoena requires you to appear and give testimony at the taking of a deposition, at the date and time specified in Item 5, and at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

3. PLACE OF DEPOSITION  Federal Trade Commission 901 Market Street, Suite 570 San Francisco, CA 94103	4. YOUR APPEARANCE WILL BE BEFORE FTC Attorney or other designated counsel  5. DATE AND TIME OF DEPOSITION <i>June 17, 2014 09:00 A.M.</i>
---	--

6. SUBJECT OF PROCEEDING  In the Matter of Jerk, LLC et al., Docket No. 9361	
--	--

7. ADMINISTRATIVE LAW JUDGE  Chief Administrative Law Judge D. Michael Chappell  Federal Trade Commission Washington, D.C. 20580	8. COUNSEL AND PARTY ISSUING SUBPOENA Sarah Schroeder, Complaint Counsel Federal Trade Commission 901 Market Street, Suite 570 San Francisco, CA 94103 (415) 848-5100
---	--

DATE SIGNED <i>5/28/14</i>	SIGNATURE OF COUNSEL ISSUING SUBPOENA 
-------------------------------	--

### GENERAL INSTRUCTIONS

#### APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

#### MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

#### TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to Counsel listed in Item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Counsel listed in Item 8.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

**RETURN OF SERVICE**

*I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)*

- in person.*
- by registered mail.* By Federal Express overnight mail, pursuant to Rule 4.4(a)(2) of the Federal Trade Commission's Rules of Practice.
- by leaving copy at principal office or place of business, to wit:*

*on the person named herein on:*

*May 28, 2014*  
(Month, day, and year)  
*Beatrice Burke*  
(Name of person making service)  
*Paralegal*  
(Official title)



# SUBPOENA AD TESTIFICANDUM DEPOSITION

Provided by the Secretary of the Federal Trade Commission, and  
Issued Pursuant to Rule 3.34(a), 16 C.F.R. § 3.34(a) (2010)

1. TO  Joe Abrams 	2. FROM  UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION
--	---

This subpoena requires you to appear and give testimony at the taking of a deposition, at the date and time specified in Item 5, and at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

3. PLACE OF DEPOSITION  Federal Trade Commission 901 Market Street, Suite 570 San Francisco, CA 94103	4. YOUR APPEARANCE WILL BE BEFORE FTC Attorney or other designated counsel  5. DATE AND TIME OF DEPOSITION June 18, 2014 09:00 A.M.
---	---

6. SUBJECT OF PROCEEDING  In the Matter of Jerk, LLC et al., Docket No. 9361
--

7. ADMINISTRATIVE LAW JUDGE  Chief Administrative Law Judge D. Michael Chappell  Federal Trade Commission Washington, D.C. 20580	8. COUNSEL AND PARTY ISSUING SUBPOENA Sarah Schroeder, Complaint Counsel Federal Trade Commission 901 Market Street, Suite 570 San Francisco, CA 94103 (415) 848-5100
---	--

DATE SIGNED 5/28/14	SIGNATURE OF COUNSEL ISSUING SUBPOENA 
------------------------	--

### GENERAL INSTRUCTIONS

#### APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

#### MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

#### TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to Counsel listed in Item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Counsel listed in Item 8.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

**RETURN OF SERVICE**

*I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)*

- in person.*
- by registered mail.* By Federal Express overnight mail, pursuant to Rule 4.4(a)(2) of the Federal Trade Commission's Rules of Practice.
- by leaving copy at principal office or place of business, to wit:*

*on the person named herein on:*

*May 28, 2014*  
(Month, day, and year)

*Beatrice Burke*  
(Name of person making service)

*Paralegal*  
(Official title)

**ATTACHMENT B**

**To:** 'pcarr@eckertseamans.com'[pcarr@eckertseamans.com];  
'mcs@jaburgwilk.com'[mcs@jaburgwilk.com]  
**Cc:** 'VRoy@eckertseamans.com'[VRoy@eckertseamans.com];  
'dag@jaburgwilk.com'[dag@jaburgwilk.com]; Schroeder, Sarah[SSCHROEDER@ftc.gov]; Yankilovich,  
Boris[byankilovich@ftc.gov]; Fang, Yan[yfang@ftc.gov]; O'Brien, Kerry[KOBRIEN@ftc.gov]  
**From:** Burke, Beatrice  
**Sent:** Tue 6/24/2014 6:29:08 PM  
**Importance:** Normal  
**Subject:** FTC Docket #9361 Jerk LLC-Subpoena Ad Testificandum: Matthew Patenaude  
[FTC.Subpoena\(MatthewPatenaude\)6.24.14.pdf](#)

Dear Counsel,

Please see attached copy.

Regards,

Beatrice Burke

Paralegal

Western Region - San Francisco

U.S. Federal Trade Commission

901 Market St., Suite 570

San Francisco, CA 94103

(415) 848-5183

[bburke@ftc.gov](mailto:bburke@ftc.gov)



# SUBPOENA AD TESTIFICANDUM DEPOSITION

Provided by the Secretary of the Federal Trade Commission, and  
Issued Pursuant to Rule 3.34(a), 16 C.F.R. § 3.34(a) (2010)

<p>1. TO</p> <p>Matthew Patenaude</p> 	<p>2. FROM</p> <p>UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
---	---

This subpoena requires you to appear and give testimony at the taking of a deposition, at the date and time specified in Item 5, and at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

<p>3. PLACE OF DEPOSITION</p> <p>Federal Trade Commission 901 Market Street, Suite 570 San Francisco, CA 94103</p>	<p>4. YOUR APPEARANCE WILL BE BEFORE</p> <p>FTC Attorney or other designated counsel</p> <hr/> <p>5. DATE AND TIME OF DEPOSITION</p> <p>August 11, 2014 9:00am</p>
--	--

6. SUBJECT OF PROCEEDING

In the Matter of Jerk, LLC, et al., Docket No. 9361

<p>7. ADMINISTRATIVE LAW JUDGE</p> <p>Chief Administrative Law Judge D. Michael Chappell</p> <p>Federal Trade Commission Washington, D.C. 20580</p>	<p>8. COUNSEL AND PARTY ISSUING SUBPOENA</p> <p>Sarah Schroeder, Complaint Counsel Federal Trade Commission 901 Market Street, Suite 570 San Francisco, CA 94103 (415) 848-5100</p>
---	---

<p>DATE SIGNED</p> <p>6/24/14</p>	<p>SIGNATURE OF COUNSEL ISSUING SUBPOENA</p> <p><i>Sarah Schroeder</i></p>
-----------------------------------	--

### GENERAL INSTRUCTIONS

#### APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

#### MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

#### TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to Counsel listed in Item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Counsel listed in Item 8.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

ATTACHMENT B

**RETURN OF SERVICE**

*I hereby certify that a duplicate original of the within subpoena was duly served (check the method used)*

- in person.*
- By Federal Express overnight mail, pursuant to Rule 4.4(a)(2) of the Federal Trade Commission's Rules of Practice.*
- by leaving copy at principal office or place of business, to wit*

*on the person named herein on:*

*24 June 2014*  
(Month, day and year)

*Beatrice Burke*  
(Name of person making service)

*Paralegal*  
(Official title)

**ATTACHMENT C**

**To:** 'pcarr@eckertseamans.com'[pcarr@eckertseamans.com];  
'VRoy@eckertseamans.com'[VRoy@eckertseamans.com]  
**Cc:** Schroeder, Sarah[SSCHROEDER@ftc.gov]; Yankilovich, Boris[byankilovich@ftc.gov]; Burke,  
Beatrice[bburke@ftc.gov]; Ortiz, Kelly[kortiz@ftc.gov]; Fang, Yan[yfang@ftc.gov]  
**From:** Burke, Beatrice  
**Sent:** Tue 9/30/2014 6:32:47 PM  
**Importance:** Normal  
**Subject:** Docket No. 9361 Deposition Notice for Maria Crimi Speth  
Depo Notice\_Maria Speth2014.09.30.pdf

Dear Counsel,

Attached please find the *subpoena ad testificandum* for Maria Crimi Speth that I already sent you. It is identical to the previous Notice sent, except this one has the correct address.

Thank you,

Beatrice Burke

Paralegal

Western Region - San Francisco

U.S. Federal Trade Commission

901 Market St., Suite 570

San Francisco, CA 94103

(415) 848-5183

[bburke@ftc.gov](mailto:bburke@ftc.gov)



# SUBPOENA AD TESTIFICANDUM DEPOSITION

Provided by the Secretary of the Federal Trade Commission, and  
Issued Pursuant to Rule 3.34(a), 16 C.F.R. § 3.34(a) (2010)

<p>1. TO</p> <p>Maria Crimi Speth, Esq. Jaburg &amp; Wilk, P.C. 3200 N. Central Ave., Suite 2000 Phoenix, AZ 85012</p>	<p>2. FROM</p> <p style="text-align: center;"><b>UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</b></p>
--	--

This subpoena requires you to appear and give testimony at the taking of a deposition, at the date and time specified in Item 5, and at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

<p>3. PLACE OF DEPOSITION</p> <p><i>United States Courthouse and Federal Building 230 N. First Ave. Suite 3417 Phoenix, AZ 85008</i></p>	<p>4. YOUR APPEARANCE WILL BE BEFORE</p> <p style="text-align: center;">FTC Attorney or other designated counsel</p>
<p>5. DATE AND TIME OF DEPOSITION</p> <p style="text-align: center;">Tuesday, October 7, 2014 10:00am</p>	

6. SUBJECT OF PROCEEDING

In the Matter of Jerk, LLC et al., Docket No. 9361

<p>7. ADMINISTRATIVE LAW JUDGE</p> <p style="padding-left: 40px;">Chief Administrative Law Judge D. Michael Chappell</p> <p style="padding-left: 40px;">Federal Trade Commission Washington, D.C. 20580</p>	<p>8. COUNSEL AND PARTY ISSUING SUBPOENA</p> <p style="padding-left: 40px;">Sarah Schroeder, Complaint Counsel Federal Trade Commission 901 Market Street, Suite 570 San Francisco, CA 94103 (415) 848-5100</p>
---	---

<p>DATE SIGNED</p> <p style="text-align: center;"><i>9/30/14</i></p>	<p>SIGNATURE OF COUNSEL ISSUING SUBPOENA</p> <p style="text-align: center;"><i>Sarah Schroeder</i></p>
--	--

### GENERAL INSTRUCTIONS

**APPEARANCE**

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

**MOTION TO LIMIT OR QUASH**

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

**TRAVEL EXPENSES**

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to Counsel listed in Item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Counsel listed in Item 8.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

- in person.
- by registered mail. By Federal Express overnight mail, pursuant to Rule 4.4(a)(2) of the Federal Trade Commission's Rules of Practice.
- by leaving copy at principal office or place of business, to wit

on the person named herein on:

Sep 30, 2014  
(Month, day, and year)  
Beatrice Burke  
(Name of person making service)  
Paralegal  
(Official title)

**ATTACHMENT D**

**To:** 'mcs@jaburgwilk.com'[mcs@jaburgwilk.com]  
**Cc:** Schroeder, Sarah[SSCHROEDER@ftc.gov]; Yankilovich, Boris[byankilovich@ftc.gov]; Burke, Beatrice[bburke@ftc.gov]; Fang, Yan[yfang@ftc.gov]  
**From:** Burke, Beatrice  
**Sent:** Tue 9/30/2014 3:35:13 PM  
**Importance:** Normal  
**Subject:** Docket No. 9361 Deposition Notice for Maria Crimi Speth  
Depo Notice Maria Speth2014.09.30.pdf

Dear Ms. Speth,

Attached please find the *subpoena ad testificandum* previously sent to you. It is identical to the previous Notice sent, except this one has the correct address.

Thank you,

Beatrice Burke

Paralegal

Western Region - San Francisco

U.S. Federal Trade Commission

901 Market St., Suite 570

San Francisco, CA 94103

(415) 848-5183

[bburke@ftc.gov](mailto:bburke@ftc.gov)



# SUBPOENA AD TESTIFICANDUM DEPOSITION

Provided by the Secretary of the Federal Trade Commission, and  
Issued Pursuant to Rule 3.34(a), 16 C.F.R. § 3.34(a) (2010)

1. TO  Maria Crimi Speth, Esq. Jaburg & Wilk, P.C. 3200 N. Central Ave., Suite 2000 Phoenix, AZ 85012	2. FROM  <p style="text-align: center;"><b>UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</b></p>
--	--

This subpoena requires you to appear and give testimony at the taking of a deposition, at the date and time specified in Item 5, and at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

3. PLACE OF DEPOSITION  <i>United States Courthouse and Federal Building</i> <i>230 N. First Ave.</i> <i>Suite 3417</i> <i>Phoenix, AZ 85003</i>	4. YOUR APPEARANCE WILL BE BEFORE  FTC Attorney or other designated counsel
5. DATE AND TIME OF DEPOSITION  Tuesday, October 7, 2014 10:00am	

6. SUBJECT OF PROCEEDING

In the Matter of Jerk, LLC et al., Docket No. 9361

7. ADMINISTRATIVE LAW JUDGE  Chief Administrative Law Judge D. Michael Chappell  Federal Trade Commission Washington, D.C. 20580	8. COUNSEL AND PARTY ISSUING SUBPOENA Sarah Schroeder, Complaint Counsel Federal Trade Commission 901 Market Street, Suite 570 San Francisco, CA 94103 (415) 848-5100
---	--

DATE SIGNED  <i>9/30/14</i>	SIGNATURE OF COUNSEL ISSUING SUBPOENA  
-----------------------------------	---

### GENERAL INSTRUCTIONS

#### APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

#### MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

#### TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to Counsel listed in Item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Counsel listed in Item 8.

A copy of the Commission's Rules of Practice is available online at <http://ftl.ly/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

- in person.
- By Federal Express overnight mail, pursuant to Rule 4.4(a)(2) of the Federal Trade Commission's Rules of Practice.
- by registered mail.
- by leaving copy at principal office or place of business, to wit:

on the person named herein on:

SEP 30, 2014  
(Date, day, and year)  
Beatrice Burke  
(Name of person making service)  
Paralegal  
(Occupation)

## **ATTACHMENT E**

**To:** 'pcarr@eckertseamans.com'[pcarr@eckertseamans.com];  
'VRoy@eckertseamans.com'[VRoy@eckertseamans.com]  
**Cc:** Schroeder, Sarah[SSCHROEDER@ftc.gov]; Ortiz, Kelly[kortiz@ftc.gov]; Yankilovich,  
Boris[byankilovich@ftc.gov]; Abbe, Kenneth[KABBE@ftc.gov]; Fang, Yan[yfang@ftc.gov]  
**From:** Burke, Beatrice  
**Sent:** Tue 10/7/2014 3:35:43 PM  
**Importance:** Normal  
**Subject:** FTC Docket #9361 In the Matter of Jerk-Subpoena for Aaron Zinman  
SAT\_Zinman.pdf

Dear Counsel,

Attached please find a *Subpoena Ad Testificandum* to Aaron Zinman.

Best regards,

Beatrice Burke

Paralegal

U.S. Federal Trade Commission

(415) 848-5183

[bburke@ftc.gov](mailto:bburke@ftc.gov)



# SUBPOENA AD TESTIFICANDUM DEPOSITION

Provided by the Secretary of the Federal Trade Commission, and  
Issued Pursuant to Rule 3.34(a), 16 C.F.R. § 3.34(a) (2010)

1. TO Aaron Zinman c/o Britt Evangelist, Esq. Swanson & McNamara LLP 300 Montgomery Street, Suite 1100 San Francisco, CA 94104	2. FROM  <div style="text-align: center; font-weight: bold; font-size: 1.2em;">           UNITED STATES OF AMERICA            FEDERAL TRADE COMMISSION         </div>
---	---

This subpoena requires you to appear and give testimony at the taking of a deposition, at the date and time specified in Item 5, and at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

3. PLACE OF DEPOSITION  Federal Trade Commission 901 Market Street, Suite 570 San Francisco, CA 94103	4. YOUR APPEARANCE WILL BE BEFORE <div style="text-align: center;">           FTC Attorney or other designated counsel         </div>
	5. DATE AND TIME OF DEPOSITION <div style="text-align: center; font-style: italic;">           November 17, 2014 10:00am (PT)         </div>

6. SUBJECT OF PROCEEDING  In the Matter of Jerk, LLC et al., Docket No. 9361
--

7. ADMINISTRATIVE LAW JUDGE  Chief Administrative Law Judge D. Michael Chappell  Federal Trade Commission Washington, D.C. 20580	8. COUNSEL AND PARTY ISSUING SUBPOENA Sarah Schroeder, Complaint Counsel Federal Trade Commission 901 Market Street, Suite 570 San Francisco, CA 94103 (415) 848-5100
---	--

DATE SIGNED  10/7/2014	SIGNATURE OF COUNSEL ISSUING SUBPOENA  <div style="text-align: center; font-style: italic;"> </div>
------------------------------	---

### GENERAL INSTRUCTIONS

#### APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

#### MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

#### TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to Counsel listed in Item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Counsel listed in Item 8.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/ETCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

**ATTACHMENT F**

From: (415) 848-5100  
Beatrice Burke  
FEDERAL TRADE COMMISSION  
901 MARKET ST. SUITE 570  
  
SAN FRANCISCO, CA 94103

Origin ID: JCCA



Ship Date: 07OCT14  
ActWgt: 1.0 LB  
CAD: 102577847/NET3550

Delivery Address Bar Code:

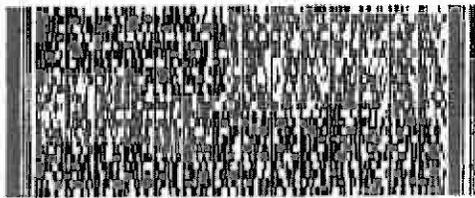


SHIP TO: (415) 848-5100 BILL SENDER  
**National Registered Agents, Inc.**  
Attn: Jerk, LLC  
160 Greentree Drive, Suite 101  
  
DOVER, DE 19904

Ref # FTCDocket#9361  
Invoice #  
PO # 1689  
Dept #

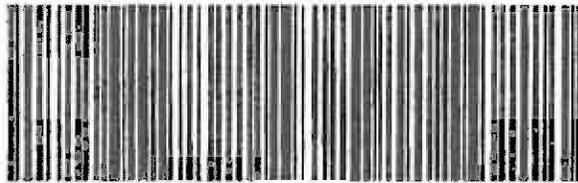
WED - 08 OCT 12:00P  
PRIORITY OVERNIGHT

TRK# 7714 1789 9500  
0201



**XB DOVA**

19904  
DE-US  
PHL



S22G1DF848AC3

**After printing this label:**

1. Use the 'Print' button on this page to print your label to your laser or inkjet printer.
2. Fold the printed page along the horizontal line.
3. Place label in shipping pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

**Warning:** Use only the printed original label for shipping. Using a photocopy of this label for shipping purposes is fraudulent and could result in additional billing charges, along with the cancellation of your FedEx account number. Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on fedex.com. FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$1,000, e.g. jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits, see current FedEx Service Guide.



United States of America  
FEDERAL TRADE COMMISSION  
Western Region San Francisco

Beatrice Burke  
Paralegal

901 Market St., Ste 570  
San Francisco, CA 94103

Office: (415) 848-5183

October 7, 2014

**Sent via Federal Express Overnight**

Attn: Jerk, LLC  
National Registered Agents, Inc.  
160 Greentree Drive, Suite 101  
Dover, DE 19904

Re: *In the Matter of Jerk LLC et al.*, Docket No. 9361

Dear National Registered Agents, Inc ,

Enclosed please find a courtesy copy of the *Subpoena Ad Testificandum* to Aaron Ziman for Jerk, LLC.

Regards,  
*Beatrice Burke*  
Paralegal



**SUBPOENA AD TESTIFICANDUM  
DEPOSITION**

Provided by the Secretary of the Federal Trade Commission, and  
Issued Pursuant to Rule 3.34(a), 16 C.F.R. § 3.34(a) (2010)

1. TO  
Aaron Zinman  
c/o Britt Evangelist, Esq.  
Swanson & McNamara LLP  
300 Montgomery Street, Suite 1100  
San Francisco, CA 94104

2. FROM  
  
**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION**

This subpoena requires you to appear and give testimony at the taking of a deposition, at the date and time specified in Item 5, and at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

3. PLACE OF DEPOSITION  
  
Federal Trade Commission  
901 Market Street, Suite 570  
San Francisco, CA 94103

4. YOUR APPEARANCE WILL BE BEFORE  
FTC Attorney or other designated counsel

5. DATE AND TIME OF DEPOSITION  
*November 17, 2014 10:00am (PT)*

6. SUBJECT OF PROCEEDING  
  
In the Matter of Jerk, LLC et al., Docket No 9361

7. ADMINISTRATIVE LAW JUDGE  
  
Chief Administrative Law Judge D. Michael Chappell  
  
Federal Trade Commission  
Washington, D.C. 20580

8. COUNSEL AND PARTY ISSUING SUBPOENA  
Sarah Schroeder, Complaint Counsel  
Federal Trade Commission  
901 Market Street, Suite 570  
San Francisco, CA 94103  
(415) 848-5100

DATE SIGNED  
  
10/7/2014

SIGNATURE OF COUNSEL ISSUING SUBPOENA  
*Sarah Schroeder*

**GENERAL INSTRUCTIONS**

**APPEARANCE**

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

**MOTION TO LIMIT OR QUASH**

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

**TRAVEL EXPENSES**

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to Counsel listed in Item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Counsel listed in Item 8.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

## **ATTACHMENT G**

**Cc:** Schroeder, Sarah[SSCHROEDER@ftc.gov]; Burke, Beatrice[bburke@ftc.gov]; Ortiz, Kelly[kortiz@ftc.gov]  
**To:** pcarr@eckertseamans.com[pcarr@eckertseamans.com]; VRoy@eckertseamans.com[VRoy@eckertseamans.com]  
**From:** Burke, Beatrice  
**Sent:** Tue 10/7/2014 11:45:00 AM  
**Importance:** Normal  
**Subject:** FTC Dkt #9361 In the Matter of Jerk LLC - Prod 026

**You have received 1 secure file from bburke@ftc.gov.**  
Use the secure link below to download.

Dear Counsel,

At the link provided, please find the following documents:

Second Set of Requests for Documents

Second Set of Interrogatories

Subpoena Ad Testificandum to Craig Kauffman

Subpoena Ad Testificandum to [REDACTED]

Subpoena Duces Tecum to Highland Capital

Subpoena Duces Tecum to Bessamer Venture Partners

Cox Documents

Best regards,

Beatrice Burke

Paralegal

Federal Trade Commission

Secure File Downloads:

Available until: **11 October 2014**

Click link to download:

**Prod 026.zip**

23,685.89 KB

You have received attachment link(s) within this email sent via the FTC Secure Mail system. To retrieve the attachment(s), please click on the link(s).

Secured by Accellion



# SUBPOENA AD TESTIFICANDUM DEPOSITION

Provided by the Secretary of the Federal Trade Commission, and  
Issued Pursuant to Rule 3.34(a), 16 C.F.R. § 3.34(a) (2010)

1. TO  Craig Kauffman <div style="background-color: black; width: 100px; height: 15px; margin-top: 5px;"></div>	2. FROM  <p style="text-align: center; font-weight: bold;">UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
--	--

This subpoena requires you to appear and give testimony at the taking of a deposition, at the date and time specified in Item 5, and at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

3. PLACE OF DEPOSITION  Federal Trade Commission 901 Market Street, Suite 570 San Francisco, CA 94103	4. YOUR APPEARANCE WILL BE BEFORE  FTC Attorney or other designated counsel
	5. DATE AND TIME OF DEPOSITION  <i>November 14, 2014 10:00am (PT)</i>

6. SUBJECT OF PROCEEDING  In the Matter of Jerk, LLC et al., Docket No. 9361
--

7. ADMINISTRATIVE LAW JUDGE  Chief Administrative Law Judge D. Michael Chappell  Federal Trade Commission Washington, D.C. 20580	8. COUNSEL AND PARTY ISSUING SUBPOENA Sarah Schroeder, Complaint Counsel Federal Trade Commission 901 Market Street, Suite 570 San Francisco, CA 94103 (415) 848-5100
---	--

DATE SIGNED  <i>9/30/14</i>	SIGNATURE OF COUNSEL ISSUING SUBPOENA  
-----------------------------------	---

### GENERAL INSTRUCTIONS

**APPEARANCE**  
The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

**MOTION TO LIMIT OR QUASH**  
The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

**TRAVEL EXPENSES**  
The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to Counsel listed in Item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Counsel listed in Item 8.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

- in person.
- By Federal Express overnight mail, pursuant to Rule 4.4(a)(2) of the Federal Trade Commission's Rules of Practice.
- by registered mail.
- by leaving copy at principal office or place of business, to wit:

on the person named herein on:

Oct 7, 2014  
(Month, day, and year)

Patrice Burke  
(Name of person making service)

Paralegal  
(Official title)



# SUBPOENA AD TESTIFICANDUM DEPOSITION

Provided by the Secretary of the Federal Trade Commission, and  
Issued Pursuant to Rule 3.34(a), 16 C.F.R. § 3.34(a) (2010)

1. TO  	2. FROM  UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION
--	---

This subpoena requires you to appear and give testimony at the taking of a deposition, at the date and time specified in Item 5, and at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

3. PLACE OF DEPOSITION  Federal Trade Commission 901 Market Street, Suite 570 San Francisco, CA 94103	4. YOUR APPEARANCE WILL BE BEFORE FTC Attorney or other designated counsel  5. DATE AND TIME OF DEPOSITION  November 3, 2014 10:00am (PT)
---	--

6. SUBJECT OF PROCEEDING  In the Matter of Jerk, LLC et al., Docket No. 9361
--

7. ADMINISTRATIVE LAW JUDGE  Chief Administrative Law Judge D. Michael Chappell  Federal Trade Commission Washington, D.C. 20580	8. COUNSEL AND PARTY ISSUING SUBPOENA Sarah Schroeder, Complaint Counsel Federal Trade Commission 901 Market Street, Suite 570 San Francisco, CA 94103 (415) 848-5100
---	--

DATE SIGNED  10/7/2014	SIGNATURE OF COUNSEL ISSUING SUBPOENA  
------------------------------	--

### GENERAL INSTRUCTIONS

#### APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

#### MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

#### TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to Counsel listed in Item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Counsel listed in Item 8.

A copy of the Commission's Rules of Practice is available online at <http://btl.ftcrulesofpractice.gov>. Paper copies are available upon request.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

**RETURN OF SERVICE**

*I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)*

- in person.*
- by registered mail.* By Federal Express overnight mail, pursuant to Rule 4.4(a)(2) of the Federal Trade Commission's Rules of Practice.
- by leaving copy at principal office or place of business, to wit:*

*on the person named herein on:*

Oct 7, 2014  
(Month, day, and year)

Beatrice Burhe  
(Name of person making service)

Paralegal  
(Official title)

## **ATTACHMENT H**

From: (415) 848-5183  
Beatrice Burke  
FEDERAL TRADE COMMISSION  
901 MARKET ST. SUITE 570

Origin ID: JCCA



J142214692903W

Ship Date: 07OCT14  
ActWgt: 1.0 LB  
CAD: 102577847/NET3550

SAN FRANCISCO, CA 94103

Delivery Address Bar Code



SHIP TO: (415) 848-5183

BILL SENDER

**National Registered Agents, Inc.**  
Attn: Jerk, LLC  
160 Greentree Drive, Suite 101

Ref # FTCDocket9361  
Invoice #  
PO # 1689  
Dept #

DOVER, DE 19904

WED - 08 OCT 12:00P  
PRIORITY OVERNIGHT

TRK# 7714 1560 4795

8281



**XB DOVA**

19904  
DE-US  
PHL



522G1DF648AC3

**After printing this label:**

1. Use the 'Print' button on this page to print your label to your laser or inkjet printer.
2. Fold the printed page along the horizontal line.
3. Place label in shipping pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

**Warning:** Use only the printed original label for shipping. Using a photocopy of this label for shipping purposes is fraudulent and could result in additional billing charges, along with the cancellation of your FedEx account number.  
./templates/components/dotcom\_label\_contents/TnCDom/us/en/TC\_dom.html loading ...



United States of America  
FEDERAL TRADE COMMISSION  
Western Region San Francisco

Beatrice Burke  
Paralegal

901 Market St., Ste. 570  
San Francisco, CA 94103

Office (415) 848-5183

October 7, 2014

**Sent via Federal Express Overnight**

Attn: Jerk, LLC  
National Registered Agents, Inc.  
160 Greentree Drive, Suite 101  
Dover, DE 19904

Re: *In the Matter of Jerk LLC et al.*, Docket No. 9361

Dear National Registered Agents, Inc.,

Enclosed please find one disk containing documents for Jerk, LLC. Because the disk contains confidential materials, it is password protected. Please contact me for the password and secure access instructions.

Regards,  
*Beatrice Burke*  
Paralegal



**ATTACHMENT I**

**In the Matter of:**

**LabMD, Inc.**

*May 15, 2014*  
*Final Prehearing Conference*

**Condensed Transcript with Word Index**



**For The Record, Inc.**  
**(301) 870-8025 - [www.ftrinc.net](http://www.ftrinc.net) - (800) 921-5555**

FEDERAL TRADE COMMISSION  
 I N D E X  
 IN RE LABMD, INC.  
 FINAL PREHEARING CONFERENCE  
 MAY 15, 2014

EXHIBITS	FOR ID	IN EVID	IN CAMERA	STRICKEN/REJECTED
JX				
Number1		38		

1 APPEARANCES:

ON BEHALF OF THE FEDERAL TRADE COMMISSION:  
 LAURA RIPOSO VANDRUFF, ESQ.  
 ALAIN SHEER, ESQ.  
 JARAD BROWN, ESQ.  
 MARGARET LASSACK, ESQ.  
 Federal Trade Commission  
 Bureau of Consumer Protection  
 Division of Privacy and Identity Protection  
 600 Pennsylvania Avenue, N.W.  
 Washington, D.C. 20580  
 (202) 326-2999  
 lvandruff@ftc.gov

ON BEHALF OF THE RESPONDENT:  
 WILLIAM A. SHERMAN, II, ESQ.  
 REED D. RUBINSTEIN, ESQ.  
 Dinsmore & Shohl LLP  
 801 Pennsylvania Avenue, N.W.  
 Suite 610  
 Washington, D.C. 20004  
 (202) 372-9100  
 william.sherman@dinsmore.com

UNITED STATES OF AMERICA  
 FEDERAL TRADE COMMISSION

In the Matter of  
 LabMD, Inc., a corporation, Docket No. 9357  
 Respondent.

May 15, 2014  
 10:20 a.m.  
 FINAL PREHEARING CONFERENCE

BEFORE THE HONORABLE D. MICHAEL CHAPPELL  
 Chief Administrative Law Judge  
 Federal Trade Commission  
 600 Pennsylvania Avenue, N.W.  
 Washington, D.C.

Reported by: Josett F. Whalen, Court Reporter

1 APPEARANCES: (continued)

ON BEHALF OF THE RESPONDENT:  
 KENT G. HUNTINGTON, ESQ.  
 MICHAEL PEPSON, ESQ.  
 Cause of Action  
 1919 Pennsylvania Avenue, N.W.  
 Suite 650  
 Washington, D.C. 20006  
 (202) 499-2426  
 kent.huntington@causeofaction.org

1 Exhibit A is going to be JX 1, and a new list of  
2 documents that I expect you to agree to will be JX 2.

3 And by the end of the day, I think you may need  
4 to resubmit your joint stipulation with the changes I'm  
5 telling you I'm not -- the items I'm not accepting in  
6 your paragraph 2 of that stipulation.

7 MS. VANDRUFF: May I be heard, Your Honor?

8 With respect to the stipulation, you're talking  
9 about the stipulation --

10 JUDGE CHAPPELL: For Exhibit A.

11 MS. VANDRUFF: -- on the admissibility of  
12 exhibits; is that correct?

13 JUDGE CHAPPELL: Right.

14 MS. VANDRUFF: Thank you.

15 JUDGE CHAPPELL: I think you asked your question  
16 because you had submitted another -- previously a  
17 stipulation on facts; correct?

18 MS. VANDRUFF: That's correct, Your Honor. The  
19 parties yesterday submitted a joint stipulation of law,  
20 facts and authenticity.

21 JUDGE CHAPPELL: That can be JX 1.

22 MS. VANDRUFF: Yes, Your Honor. That is how it  
23 is marked.

24 JUDGE CHAPPELL: And then what we can do with  
25 the exhibits, since I'm going to probably have you

1 withdraw your other stipulation since I'm not agreeing  
2 to the terms, then what we might do is have a JX 2 that  
3 includes Exhibit A plus what's agreed to today. Okay?

4 MS. VANDRUFF: Yes, Your Honor. Thank you.

5 JUDGE CHAPPELL: And at this time I'm going to  
6 admit JX 1 into the record, so that's done with.

7 (Joint Exhibit Number 1 was admitted into  
8 evidence.)

9 JUDGE CHAPPELL: Deposition designations.

10 Based on what's been filed with OALJ, I can't  
11 tell if complaint counsel did or did not designate only  
12 specific lines of testimony it seeks to introduce. In  
13 the final proposed exhibit list, complaint counsel  
14 listed various deposition transcripts as proposed  
15 exhibits.

16 Respondent submitted under a counter-designation  
17 list -- or they submitted a counter-designation list  
18 which lists the entire deposition.

19 Are there other submissions relating to  
20 deposition designations that I'm not aware of?

21 MS. VANDRUFF: May I be heard, Your Honor?

22 So with respect to the deposition designations,  
23 the parties, in an effort to maximize efficiency, we  
24 have come to an agreement to submit to the court, with  
25 Your Honor's permission, marked-up transcripts that

1 delineate complaint counsel's designations, respondent's  
2 designations, and where there's overlap a separate color  
3 for that. We think that that would be most efficient  
4 for Your Honor to review the evidence that's been  
5 designated.

6 MR. SHERMAN: That's correct, Your Honor.

7 JUDGE CHAPPELL: And as a matter of fact,  
8 although the rules talk about deposition designations,  
9 and therefore I've got that in my scheduling order,  
10 additional provisions I believe, the rules also now  
11 clearly allow deposition transcripts to be admitted, so  
12 I would prefer, submit the entire deposition transcript,  
13 and then you're in effect designating what you want to  
14 use in your posttrial briefs.

15 At that time, when you respond to that brief,  
16 make any objection you want to make, and I'll deal with  
17 it accordingly. Because I'm not going to hear  
18 objections to depositions or deposition designations  
19 today because I find a lot of those get lost and by the  
20 time we're at the end of the trial very few of them come  
21 up again.

22 So just so everybody is clear, submit the  
23 entire deposition transcript for any witness whose  
24 testimony you want to submit by deposition, meaning  
25 those that have been designated. When we get to

1 posttrial briefing, if you want to cite to a depo, then  
2 you designate what you're referring to in your proposed  
3 finding. And then the other side, if they wish to  
4 object to that, they can do that in their reply to the  
5 proposed finding.

6 MS. VANDRUFF: May I ask a question,  
7 Your Honor?

8 JUDGE CHAPPELL: Yes.

9 MS. VANDRUFF: With respect to the designations  
10 the parties have already exchanged, am I correct in  
11 understanding that you do not wish to see those  
12 designations; is that correct?

13 JUDGE CHAPPELL: I would prefer to see, if it's  
14 John Brown's designation, just submit the whole  
15 deposition.

16 MS. VANDRUFF: The entire transcript.

17 JUDGE CHAPPELL: Right.

18 MS. VANDRUFF: Unmarked, unannotated.

19 JUDGE CHAPPELL: What I'm saying is, I've got  
20 your designations I've seen filed, but what's important  
21 to me is what you want to urge at the end of the case in  
22 your posttrial brief, in your proposed findings.

23 So what I'm saying is, you're not disallowed  
24 from using any designation you want. I'm not going to  
25 make that ruling today.