

PUBLIC

<p>9.</p>	<p>John Fanning has participated directly in or had the authority to control the acts or practices at issue.</p>	<p><i>See CCSMF 97 to 157</i></p>
	<p><u>Commerce</u></p>	
<p>10.</p>	<p>The acts and practices of Respondents, as alleged in the Complaint, have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.</p>	<p><i>Jerk’s Answer ¶ 3</i> <i>Fanning’s Answer ¶ 3</i></p>
<p>11.</p>	<p>Jerk earned revenue by selling \$30 memberships.</p>	<p><i>Jerk’s Answer ¶ 5</i> <i>Fanning’s Answer ¶ 5</i></p>
<p>12.</p>	<p>Jerk earned revenue by charging consumers a \$25 customer service fee.</p>	<p><i>Jerk’s Answer ¶ 5</i> <i>Fanning’s Answer ¶ 5</i></p>
<p>13.</p>	<p>Jerk earned revenue by placing third-party advertisements on Jerk.com.</p>	<p><i>Jerk’s Answer ¶ 5</i> <i>Fanning’s Answer ¶ 5</i></p>
	<p><u>Background</u></p>	

		<p>guttural instinct of voting someone as a ‘Jerk’ or a ‘Saint’”)</p> <p>CX0637-003 (“Vote on people as a ‘jerk or saint’”)</p> <p>CX0629-001 ¶ 3 (“Jerk.com was a reputation management website that was intended to allow people to post reviews of others on the site and one of the features was the user ability to vote for people as either ‘jerks’ or ‘saints’ based on your knowledge of them.”)</p>
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15. Respondents leased the domain name Jerk.com from Internet Domains, a company that leases domain names.

CX0526-002 (February 2011 lease with option to purchase the domain name Jerk.com signed by “John Fanning, Jerk LLC”)

CX0527-002 (email from Jerk.com domain name owner to Fanning’s attorney: “If you will review the lease agreement . . . and John Fanning with Jerk LLC, (the ‘Buyer’) . . . We

		Romanian programmer to Fanning: “we have created 7000 profiles so far”)
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18. In the summer of 2009, programmers hired by John Fanning began auto-

		} CX0309-001 (May 2010 email from Fanning:
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		<p>“When it comes to reper.com its owned by jerk.com LLC so I think the founders titles have already been taken, however I think it’s probably ok to Have Henry and Alastair use the titles of Founder reper.com because clearly the project has been driven the three of us. My main concern right now is to close financing. We need to do that now.”)</p>
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21. In 2013, Jerk and Internet Domains had a payment dispute and Internet Domains purportedly locked Respondents out of the Jerk.com domain.

CX0527-003 (May 2013 email from Louie Lardas to John Fanning: “You are hereby given notice to pay or quit. You have 3 business days to comply with this demand for payment. Failure to do so will result in your domain being disconnected at the end of 3 days and a default notice to terminate lease.”)

CX0527-001 (May 2013 letter from Jerk’s attorney to Louis Lardas: “Today, I learned that you have redirected the domain name

	individual profiles.	
	<u>Jerk.com Profiles</u>	

25. Jerk.com profiles contained a profile subject's first and last name.

Jerk's Answer ¶ 6(er)]TJ/TT5 1 Tf5.935 0 TD.0019 T

		<p>about that. The issues regarding privacy, which you had mentioned, what was the issue that you and John talked about regarding privacy? A. Well, I mean, as I said here, I raised the issue that we're listing people's e-mail addresses and their photos and so on, and the question was can we do that. That there was a privacy concern that I raised. Q. And what was John's response to that privacy concern? A. As I remember, he said that it was fine, that he was getting it from public sources and so, therefore, it wasn't really private or something to that effect.")</p>
<p>37.</p>	<p>Numerous consumers, including parents and job searchers, discovered Jerk.com profiles of themselves or family members on the Internet.</p>	<p>CX0032-001 ¶ 3 (found son); CX0036-001 ¶ 3 (found two infant children); CX0005-001 ¶ 2 (job searching); CX0007-001 ¶ 2 (job searching); CX0040-001 ¶ 2 (found daughter); CX0028-002 ¶ 2 (aunt told her mom); CX0031-002 ¶ 1 (found self)</p>
<p>38.</p>	<p>By mid-2010, Jerk.com profiles were often among the top searches results on search engines such as Google.</p>	<p>CX0153-2 (email from Fanning: "We regularly show up among the top 1-3 search results on search engines like Google when someone searches a person's name who is in our database. . . . We had over 1000 people yesterday come to jerk.com from this method."); <i>see also</i> CX0375-002</p> <p>CX0443-001 (Tipping Gardner Google analytics report: "Most of the traffic for Jerk.com originates from search engines."); <i>see also</i> CX0157-002</p> <p>CX0231 (Jerk document describing "Market Growth & Opportunity": "[Jerk.com] also dominates in Search Engine Optimization techniques by coming up in the top two slots of Google for a growing number of its profiles when a name is searched on Google.")</p> <p>CX0397 (email from Fanning to potential investor demonstrating how Jerk.com shows</p>

		<p>up first in most Google searches for a name)</p> <p>CX0637-003 (presentation: “Jerk.com regularly shows up at the top of Google search results for people searches”)</p> <p>CX0004-001 ¶ 2; CX0005-001 ¶ 2; CX0006-001 ¶ 2; CX0007-001 ¶ 3; CX0010-001 ¶ 2; CX0011-001 ¶ 2; CX0026-001 ¶ 2; CX0027-001 ¶ 2; CX0028-001 ¶ 2; CX0031-002 ¶ 1; CX0032-001 ¶ 2; CX0036-001 ¶ 2; CX0037-001 ¶ 2; CX0038-001 ¶ 2; CX0040-001 ¶ 2 (consumer declarations); CX035-001 (consumer complaint)</p>
	<p><u>Respondents’ Deceptive Representation Regarding Source of Jerk.com Content (Count I)</u></p>	
	<p>Respondents’ Representations about the Creation of Jerk.com Profiles</p>	
<p>39.</p>	<p>Respondents represented that content on Jerk, including names, photographs, and other content, was created by Jerk.com users and reflected those users’ views of the profiled individuals.</p>	<p>See CCSMF 40 to 46</p>

- 40.** Respondents have disseminated or has caused to be disseminated statements to consumers about the source of Jerk.com profiles and of content in those profiles.

	saint in the eyes of others.”	
45.	Jerk.com’s “Post a Jerk” section stated: “Fill out the form below to find or create a profile on jerk. Include a picture if you can and as much other information as possible.”	<i>Jerk’s Answer ¶ 4</i> <i>Fanning’s Answer ¶ 4</i> CX0048-031 (“Post a Jerk”) CX0274 (“Post a Jerk”)
46.	Jerk.com’s Twitter account has stated, “Find out what your ‘friends’ are saying about you behind your back to the rest of the world!”	CX0282-001

<p>48.</p>	<p>Jerk staff drafted a Wikipedia entry for Jerk.com that described the website as a user-generated social network.</p>	<p>CX0670 (email from Fanning: “I figured this is a good time to finish the Wikipedia page for jerk.com. . . . The first Anti Social Network. Jerk.com everyone both online and off line.”)</p> <p>CX0636-001 (“Jerk.com is an online [Wikipedia link] social networking [Wikipedia link] and reputation management [Wikipedia link] service which attempts to determine whether its users are good (denoted as Saints) or bad people (denoted as Jerks) based on the opinions of those around them. Each user has his own profile which consists of a picture, brief biographical information, personality quiz, and reviews from other Jerk users.”); <i>see also</i> CX0629-001 ¶ 4 (CX0636 is a “Wikipedia entry describing Jerk.com that I was asked to do a first draft for.”)</p> <p>CX0642-002 (email exchange among Jerk staff about writing a Wikipedia entry)</p>
<p>49.</p>	<p>Respondents represented to investors that Jerk.com was an organic, user-generated website.</p>	<p>CX0112-001 (email from Fanning to investor: “Jerk.com will provide a framework for uploading and posting, ratings, reviews, feedback, photos, and data on an individual basis. Like Wikipedia this content will be grown organically from the users themselves and reflect the view of the people who have personal, first-hand knowledge of the jerk.com individual who is profiled.”)</p> <p>CX0117-002-003 (email from Fanning to investor: “Jerk.Com – Company Summary . . . [Jerk.com] offers a framework for posting praise and disputes, computing ratings, and gathering feedback and comments; the system provides for users to include photos and personal information.”)</p> <p>CX0046-047 (presentation on NetCapital’s website: “Jerk.com provides consumer reputation management . . . Designed to offer</p>

	<p>Wikipedia-like information on doing business and for social interactions on the web, the content is growing organically from the users themselves and reflect the view of the people who have personal first hand knowledge of the profiled individual.”); <i>see also</i> CX0207-001 (same)</p>
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<p>50. Counsel for Jerk represented to the FTC, state attorneys general, and Facebook that content on Jerk.com was user-generated.</p>	<p>CX0291-001 (Jerk’s Petition to Quash, “Profiles are submitted to Jerk.com by users by choosing the ‘post a jerk’ option.”)</p> <p>CX0528-001; CX0529-001; 1-001 (letters from counsel for Jerk to the offices of the attorneys general of Missouri, Connecticut and New York: “Jerk, LLC operates the forum, but the content is provided by users.”)</p> <p>CX0107-003 (letter from Jerk’s counsel to Facebook: “You claim jerk.com uses automated means to collect Facebook user data. Again, jerk.com users –not Jerk LLC – post content to jerk.com.”)</p> <p>CX0107-004 (letter from Jerk’s counsel to Facebook: “Again Jerk LLC is not accessing Facebook, much less accessing Facebook ‘without permission.’”)</p>
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	<p>alarmed. I thought that someone was messing with me.”)</p> <p>CX0027-001 ¶¶ 3, 4 (“The photo was taken from a Facebook account, and my brother told me that he never gave anyone permission to use it on jerk.com . . . It appears that someone else created the profile, and he told me that he did not know who did it.”)</p> <p>CX0028-001 ¶ 5 (“When I first saw the profile, I thought someone I knew in the past might have posted the photograph because I had uploaded it to Facebook years ago when I was still on Facebook. Since my account had been closed for years, someone who knew me from before probably took that Facebook picture and then posted it to jerk.com.”)</p> <p>CX0591 (“I have to remove my name from this site somehow, and also wish to find out who did this as I feel very nervous now that someone has done this to me intentionally.”)</p> <p>CX0576 (“Someone has created an unauthorized profile for me on Jerk.com and used a personal & private picture of me with my wife. The picture was taken from our Facebook profile and is being used by this website.”)</p> <p>CX0554 (“I have no idea how in the world it got there or who opened it. I tried to click ‘remove me’ but I have to pay a fee. I did not open this profile and I don't know who did or where they received my information.”)</p> <p>CX0565 (consumer reports that she googled herself and someone has placed her information on Jerk.com)</p> <p>CX0570 (“in the account that was set up was not done by myself and someone stole this picture of me.”)</p>
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		<p>CX0577 (consumer states that someone has placed her picture and some information about her on Jerk.com)</p> <p>CX0586 (“Someone took my first name, last name, amp [sic] picture and created a profile without my consent.”)</p> <p>CX0028 ¶ 5 (“I thought someone I knew in the past might have posted the photograph”)</p> <p>CX0610 (“I would also like to know who posted these pages so I can report them to the proper legal authorities.”)</p> <p>CX0613 (“I have never signed up at this website and have no idea how they received a picture of me to put on the website jerk.com.”)</p> <p>CX0604 (“An account/profile has been set up in my name on jerk.com with my name and photo . . . I did not do this or authorize anyone to do it for me”)</p>
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		<p>nominated me for this site but it has had repercussions in my life that are directly related to this site.”)</p>
<p>52.</p>	<p>Respondents’ representation that content on Jerk.com was created by Jerk.com users and reflected those users’ views of the profiled individuals was important to consumers and affected consumers’ conduct regarding Jerk.com.</p>	<p>See CCSMF 53 to 55</p>
<p>53.</p>	<p>Thinking that someone had created their profiles on Jerk.com, consumers were concerned and spent considerable time trying to remove their profiles.</p>	<p>CX0036 ¶¶ 3, 9 (“When I clicked on the link to Jerk.com from my Google search, I found a profile with my name and a photo of me with my husband and two infant children. . . . The profile had no other information about me or my family . . . no one had voted. Initially, I was worried that someone had created the Jerk.com profile against me. I was mortified and embarrassed . . . I have spent around 20 hours trying to remove the Jerk.com profile. I am worried about this because the Jerk.com profile could harm my ability to return to my job as a social worker if people search me and the search results show a Jerk.com entry.”)</p> <p>CX0011 ¶¶ 3, 17 (“When I visited jerk.com, I found a photo of me and my husband that I uploaded to Facebook in November 2009. This picture was clearly taken from my Facebook page even though that page is only accessible to people I have accepted as friends. The jerk.com profile contained no other information on me other than this photo. I did not authorize anyone to post my information on jerk.com and do not know how my photo appeared on the website. . . I have spent around 20-40 hours trying to remove my jerk.com profile.”)</p> <p>CX0037 ¶¶ 3, 7 (“When I visited jerk.com, I saw a profile with my full name and a photograph of me as a child. I immediately thought that someone who didn’t like me put</p>

		me there. . . . I spent at least 30 or more hours researching how to request takedowns.”)
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54. Jerk staff discussed the fact that consumers value user-generated social networks more than auto-generated websites.

CX0344-001 (email among Jerk staff and Fanning: “LinkedIn has 70 million members who use the site to get information about and

	<p>CX0438-56:6-12 (Depo. Q: Do you know which of the mechanisms we are talking about are attributable to this Facebook growth? Is it the scraping, or the users having their friends input into Jerk.com? A: That, I do not know for sure. My intuition just on the size of the growth would be that it was largely the result of scraping of public profiles.”)</p> <p>CX0438-86:3-12 (Depo. “Q: Going back to the Facebook scraping and friends gathering techniques. Would it be accurate or inaccurate for Jerk to tell its users that all content, including the Jerk.com profiles, were created by users. A: That sounds like an inaccurate statement to me. Q: Okay. And that’s because some of the profiles were created through automated means? A: Correct.”)</p> <p>CX0181-137:22-138:2 (Depo. “Q: How did you know that the company was creating profiles by traversing Facebook for information? A: John and I talked about it and it had a rapid growth in the number of profiles that were on the site and John explained that it had something to do with getting information off of Facebook.”)</p> <p>CX0181-134:20-24 (Depo. “Q: Do you know what that meant, like how was jerk.com getting what from private sources? A: I don’t know all the details, but I know at some point the company was traversing Facebook public information and creating shell profiles for people.”)</p> <p>CX0181-214:9-25 (Depo. “Q: Let’s take a look at – let me ask you one final question. We talked about earlier the obtaining of profiles from facebook; is that right? A: The creation of shell profiles. Q: Do you know whether any or all of the 85 million profiles mention[ed] in CX-232 and CX-233 were created by that method? . . . I assume a bunch</p>
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of them were, yes. Q: Why do you assume that? A: Because I know that was one of the methods that the company was using to create shell profiles. Q: Do you know of any other

		<p>account to find friends, auto sync FaceBook and auto create track me links between all the FaceBook friends. Auto generate profiles for FaceBook friends who are not in the system already. Use the API's provided by FaceBook to accomplish this.”)</p> <p>CX0659 (website code for Jerk.com); <i>see also</i> CX0629-003 ¶ 10 (CX0659 is Jerk.com website code that an intern at Jerk.com obtained during summer of 2009.)</p> <p>CX0640-001 (email from Fanning: “Fix ‘People I know’ This is important because we need to create at least 5,000 more profiles before August (3 days and counting). Specifically, make sure the facebook part works.” Response from Romanian programmer: “we have created 7000 profiles so far – at the end of the day we will have 20,000 new profiles.”)</p> <p>CX0641-002 (email from web designer to Romanian programmer: “When you load friends from facebook, the box should say, ‘Searching for people you know’ (loading bar) ‘This may take a minute, please wait!’”)</p> <p>CX0641-003 (email from developer to Romanian programmer instructing him to “Change ‘People I know’ to ‘Find People I Know’) on the menu bar.”)</p> <p>CX0438-17:7-14 (Depo. Q: So if you populated profiles from the friends, that meant if I have a friend on Facebook and I’m signing into Jerk – A: Yes. Q: – that meant that that person now has a profile on Jerk? A: Correct. That was one of the ways that some of the profiles were populated.”)</p>
<p>59.</p>	<p>Jerk.com grew to displaying more than 85 million profiles in just a few months.</p>	<p>CX0151-012 (presentation regarding Jerk.com: “In less than six months, Jerk.com: Grew to over 85 million personal profiles”); <i>see also</i> CX0368-012</p>

		<p>CX0317 (Jerk business plan: “Jerk.com grew to over 85 million profiles in just a few months.”) <i>See also</i> CX0231</p> <p>CX0153-002 (email from Fanning: “In the first 6 months of Jerk.com’s launch: Awesome viral user acquisition – Our database has grown to over 85 million profiles.”); <i>see also</i> CX0375-002</p> <p>CX0637-003 (presentation: “Introduced Jerk.com just over 6 months ago . . . Over 85 million profiles established in just a few months.”)</p>
60.	Respondents added content from various sources to populate Jerk.com profiles.	<p>CX0352-001 (email exchange among Jerk staff: “What is the information that we have received from the 85 million profiles? We collect as much info as possible. From public sources, from other users, from private sources like Intelius, and from users themselves. We don’t place any restriction on how we can use our information.”)</p> <p>CX0305-001 (email from intern to Fanning describing “100+ comments pulled from news sources” that were added to Jerk.com profiles.)</p>
61.	Few users frequented or interacted with Jerk.com.	<i>See</i> CCSMF 62 to 66

62. Jerk.com had low levels of participant

CX0443-004 (analytics report for Jerk.com: “It is important to note that customer loyalty has remained consistently low for Jerk.com over the course of their existence.”); *see also* CX0157-005 (same)

CX0441-001 (email from Fanning: “I think

		and are unlikely to use it on a regular basis. In other words, you have a great domain name that attracts attention but little reason for people to stay on the site once they get there.”)
65.	On average, users clicked through just a few pages before leaving Jerk.com.	CX0443-001 (analytics report for Jerk.com: “Users generally click through three or four times before leaving the interface.”); <i>see also</i> CX0157-002 (same) CX0443-003 (analytics report on Jerk.com: “Pages/Visit 8.08”); <i>see also</i> CX0157-004 (same)
66.	Approximately 99 percent of Jerk.com profiles did not contain user comments or a vote of Jerk/Not a Jerk.	CX0063-002 ¶ 11 (Expert Report of Brian Rowe: “I estimate that, in November 2012, 0.5 million jerk.com profiles, which was about 0.64% of all jerk.com profiles, contained any votes.”) CX0307-003 (email exchange between Fanning and Jerk staff: “Keep in mind that 99.9% of our profiles are empty, so the profile page for an empty profile will look very poor. . . . And personally, of that .1% of non-empty profiles, the content on them is complete crap. ‘This guy is gay’ and ‘that skank is ugly’ is not useful to me or anyone”)
67.	At times, consumers had to purchase a Jerk.com membership in order to upload a photo to a Jerk.com profile.	CX0260-4:38-5:00 (“sign in to add photo”); <i>see also</i> CX0261; CX0267
68.	Numerous consumers have complained that the photographs on their Jerk.com profiles were taken from Facebook.	CX0004-001 ¶ 3; CX0006-001 ¶ 3; CX0011-001 ¶ 3; CX0026-001 ¶ 3; CX0027-001 ¶ 3; CX0028-001 ¶ 3; CX0031-001 ¶ 2; CX0036-001 ¶ 4; CX0037-001 ¶ 4 (consumer declarations) CX0553; CX0555; CX0556; CX0558; CX0560; CX0562; CX0563; CX0566; CX0567; CX0568; CX0569; CX0571;

		CX0572; CX0573; CX0575; CX0576; CX0578; CX0579; CX0580; CX0581; CX0583; CX0584; CX0585; CX0587; CX0590; CX0593; CX0594; CX0597; CX0600; CX0601; CX0602; CX0607; CX0608; CX0611; CX0612; CX0614; CX0615; CX0618; CX0622; CX0626
69.	Numerous consumers have complained that photographs on Jerk.com were originally posted on Facebook using controls that enabled users to designate material for dissemination only to a limited group, and not designated for public viewing.	CX0036-001 ¶ 4; CX0011-001, 003 ¶¶ 3, 15; CX0026-001 ¶ 3; CX0028-001 ¶ 5; CX0037-001 ¶ 4; CX0031-001 ¶ 4 (consumer declarations) CX0550; CX0551; CX0552; CX0557; CX0570; CX0574; CX0582; CX0599; CX0603; CX0605; CX0606; CX0617; CX0619; CX0620; CX0623; CX0625
70.	Many photographs on Jerk.com profiles were not available through Google searches.	CX0258 ¶ 27 (an FTC investigator reviewed a sample of Jerk.com profiles and could not locate 98 of the 133 photographs on Google images)
	Respondents Generation of Profiles Violated Facebook’s Policies	
71.	Jerk’s use of Facebook data to create Jerk.com profiles violated Facebook’s policies.	See CCSMF 72 to 83

72.

change these Developer Principles and Policies at any time without prior notice as we deem necessary. Your continued use of

available and non-public data.

and includes a set of application programming interfaces ('APIs') and other services that enable third-party applications ('Facebook Applications') to interact with Facebook's services. Some of these APIs and services permit Facebook Developers to retrieve, in an automated fashion, publically available information from users' Facebook Timelines. Facebook Developers can also obtain through the Facebook Platform certain non-public data

		<p>jerk3.com, and jerk4.com] was less than 60 users.”)</p> <p>CX0105-001 ¶ 3 (Facebook declaration: “In 2011, Facebook received numerous complaints from Facebook users about their names, photos, and other content that they posted on Facebook appearing on Jerk.com without authorization.”)</p> <p>CCSMF 57-58 (Respondents created Jerk.com profiles using Facebook data)</p>
<p>78.</p>	<p>Jerk kept Facebook user data longer than Facebook policies allowed.</p>	<p>CX0095-002 (2008 Facebook Developer Terms of Service: “You can only cache user information for up to 24 hours to assist with performance.”)</p> <p>CX0096-003 (2009 Facebook Developer Principles and Policies: “You must not store or cache any data you receive from us for more than 24 hours”)</p> <p>CX0057-002 ¶ 5 (former intern at Jerk: “I saw some of Software Assist’s code for the Facebook interface and believe it was incorrectly storing information for longer than the Facebook guidelines allowed. I do not know if this aspect of the code was a programming error, intentional, or a healthy mixture of both.”)</p> <p>CX0629-004 ¶ 12 (“I was concerned that Jerk, by using Facebook users’ profiles to build its own profiles, was storing Facebook information for longer than Facebook’s Developers Terms of Use permitted.”)</p> <p>CX0438-35:11-20 (Depo. Q: Did Facebook – did Facebook allow this scraping procedure at the time it was done? A: I don’t remember the exact Terms and Conditions, but I do know that there are certain pieces of information that Facebook would say you are</p>

		<p>allowed to store this information indefinitely, and then there were other categories of information where Facebook would say you could store this for six months, ninety days, and it would degrade in order of freshness, of content that Facebook believed would frequently change.”)</p> <p>CX0438-35:24-36:16 (Depo. Q: And do you know if Jerk.com was storing all of that information? A: I do not know – I don’t remember what information was being stored. But I do believe that at that point there wasn’t any kind of data retention policy in place that would evict old information as it became stale. Q: So would that be a violation of the Facebook guidelines to keep that information longer than Facebook intended it to be kept? A: It certainly depends on what information was being stored. Whether or not it would be a violation of the guidelines, I seem to remember there were some things that didn’t look quite right, and I don’t know whether that was an oversight or whether it was an intentional decision. But there may have been a violation in terms of how long content was being stored.”)</p>
<p>79.</p>	<p>Jerk failed to provide an easily accessible mechanism for consumers to request deletion of their data; rather, the only practical way for consumers and others to contact Jerk.com was to pay a \$25 service charge. To the extent this data was obtained from Facebook, this failure violated Facebook’s policies.</p>	<p>CX0048-077 (“Contact Us . . . “If you are not logged in there is a service charge of \$25 for support”)</p> <p>CX0403-025 { }</p> <p>CX0004-001 ¶ 5 (“I could not find any other way to contact jerk.com to remove my profile. I did research on the website and found hundreds of complaints by other customers who had paid money and were unable to remove their profiles.”)</p> <p>CX0006-001 ¶ 5-6 (“I also wanted to contact</p>

		<p>the website through the customer support page on the website, but they requested \$25.00 to contact them. I refused to pay to contact customer support. Instead, I did some research on jerk.com the Internet and found an e-mail address that was supposed to be their customer service e-mail account (support@jerk.com). I e-mailed this address over five times . . . I never received any response.”)</p>
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charge.”)

CX0098-003 (2012 Facebook Platform Policies: “You will delete all data you receive from us concerning a user if the user asks you to do so, and will provide an easily accessible mechanism for users to make such a

		<p>applications in 2011.”)</p> <p>CX107-005 (July 2012 letter from Jerk to Facebook: “Jerk LLC denies any wrongful or illegal conduct and will not cease and desist its lawful conduct.”)</p> <p>CCSMF 32 (millions of profiles were still displayed on Jerk.com after 2011)</p>
82.	<p>Facebook investigated its user’s complaints about Jerk.com and sent Jerk a cease and desist letter in March 2012.</p>	<p>CX0106-001 (March 2012 letter from Facebook to Jerk: “Cease and Desist – Abuse of Facebook . . . We also understand that Jerk.com may use automated means to collect Facebook user data. These activities violate Facebook’s terms and may violate state and federal laws.”)</p> <p>CX0107 (July 2012 letter from counsel to Jerk responding to Facebook Cease and Desist letter)</p> <p>CX0105 ¶3</p>

83. A Jerk team member expressed concerns to John Fanning that Jerk was violating Facebook’s policies.

		<p>is interesting, something we might have to consider?”)</p> <p>CX0352-002 (email exchange among Jerk staff: “What are the privacy implications of taking pictures without permission/knowing a person? There are none, it’s called paparazzi.”)</p>
	<p><u>Respondents’ Deceptive Representation Regarding Jerk.com Memberships (Count II)</u></p>	
	<p>Respondents Promised Consumers “Additional Benefits” for a \$30 Jerk.com Membership</p>	
<p>84.</p>	<p>Respondents represented that consumers who subscribed to Jerk.com by paying for the \$30 membership would receive additional benefits, including the ability to dispute information posted on Jerk.com.</p>	<p><i>See CCSMF 85 to 89</i></p>

85. Respondents disseminated or caused to be disseminated statements to consumers on Jerk.com about Jerk.com memberships

	features that are available.”	
87.	The Jerk.com website has stated: “You must be a subscriber in order to create a dispute.”	CX0276 (“Become A Subscriber”)
88.	The Jerk.com website has included a billing form where consumers could enter payment information for a Jerk.com membership.	CX0276 (“Become A Subscriber”) CX0047 ¶¶ 10, 11
89.	The Jerk.com website represented that consumers would receive a password to activate their paid Jerk.com membership and use all the features.	CX0047-003 ¶ 11 (“After I paid \$30, a message appeared on screen stating: ‘Your existing account [] has been upgraded to standard membership. Please relog on jerk, to use all the features.’”) CX0001 ¶ 2 (“After I provided Jerk.com with my billing information, I was taken to a webpage that stated ‘Congratulations! You have registered a new account with standard membership. Please visit your email to retrieve your password.’”) CX0038-001 ¶ 4 (“My impression from the membership description on jerk.com was that I would receive a password that would enable me to delete content on my profile.”)
90.	Respondents intended to convey to consumers that they could receive additional features by purchasing a Jerk.com membership.	CX0117-004 (email from Fanning: “Other potential revenue streams include advertising, as well as subscription services. For example, users may be charged for access to dispute resolution for other premium and for fee services.”); <i>see also</i> CX0207-002 and CX0046-0049 (presentation on NetCapital’s website) CX0438-29:3-10 (Depo. “A: With monetizing, I know John would occasionally bring up the Yelp business model, which was

that businesses could subscribe to Yelp and pay fees, for instance, to have negative

		<p>\$30.00 charge three times”)</p> <p>CX0026 ¶ 5 (“I explored the website, searching for a way to remove my profile. At several points, the website asked me to submit my credit card information in order to make a change to my profile . . . I believed I could edit my profile if I paid jerk.com the requested fee, so I set up a PayPal account in order to make the payment.”)</p>
	<p>Consumers Who Purchased a Jerk.com Membership Did Not Receive Any Additional Benefits</p>	
<p>92.</p>	<p>Consumers who subscribed to Jerk.com by paying for a standard membership received nothing in return for their payment.</p>	<p>See CCSMF 93 to 96</p>

93. Consumers subscribed to Jerk.com by paying \$30 for a membership.

Jerk’s Answer C

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		<p>CX0040 ¶ 6 (“Each time, nothing changed.”)</p> <p>CX0026 ¶ 6 (“Immediately after I made the payment, I found that there were no new features available to me that would allow me to remove my profile. I kept trying and at one point, a pop-up window appeared that said, “Are you having fun yet?” At that moment, I knew the website was a scam.”)</p> <p>CX0001 ¶ 2-3 (“After paying \$30 to Jerk.com . . . I never received an email message from the company and, thus, never received the promised password needed to access my Jerk.com membership.”)</p> <p>CX0038 ¶ 4 (“After I paid the fee, nothing changed . . . The membership was a complete waste.”)</p>
<p>95.</p>	<p>Consumers did not receive the password that was purportedly necessary to activate their Jerk.com account.</p>	<p>CX0001 ¶ 3 (“After paying \$30 to Jerk.com, I monitored my email account for an email message from Jerk.com. I checked all my email folders, including my spam folder. I never received an email message from the company, and thus, never received the promised password needed to access my Jerk.com membership.”)</p> <p>CX0038 ¶ 4 (“I checked my email folders, including my spam folders, but did not receive a password for my jerk.com membership.”)</p>
<p>96.</p>	<p>An FTC investigator purchased a \$30 Jerk.com membership and did not receive any additional benefits.</p>	<p>CX0047 ¶¶ 6-16 (“Because I did not receive a password to access the [] Jerk membership, I was unable to access any of Jerk’s membership features.”); <i>see also</i> CX0050-52</p>

	<u>John Fanning's Control and Participation</u>	
	John Fanning founded Jerk	

97. John Fanning was the founder of Jerk. CX0210-001 {

<p>100.</p>	<p>Incorporation documents for Jerk listed John Fanning as the sole managing member of Jerk.</p>	<p>CX0737-003 (“On January 21, 2009 the following person(s) were named to serve as the Managing Member(s) of the Limited Liability Company [Jerk, LLC] until their successors are elected and qualify: John Fanning”)</p>
<p>101.</p>	<p>{John Fanning represented to Bank of America that he was a member of Jerk.}</p>	<p>CX0411-001 { }</p>
<p>102.</p>	<p>{In April 2010, John Fanning signed the W-9 taxpayer ID form for Jerk.}</p>	<p>CX0507</p>
<p>103.</p>	<p>John Fanning participated in board meetings for Jerk.</p>	<p>CX0115-001 (email from Fanning: “Yosi and I had our board meeting last night”)</p>

104. John Fanning distributed shares of Jerk to an investor.

CX0115-001 (email from Fanning: “Yosi and I had our board meeting last night and approved issuing Founders shares for 10% of the fully diluted shares of Jerk LLC for \$25,000.00 USD so we have a deal.”)

CX0119-001 (email from Fanning: “I will

	was a majority shareholder in Jerk and commingled funds with Jerk	
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106. John Fanning is a founder, manager, and officer of NetCapital, and has held himself out as having a controlling influence over the company.

CX0375-002 (“John W. Fanning, Chairman NetCapital”)

CX0283-001 (Fanning declaration submitted to United States District Court: “I, John Fanning, declare: 1. I am a Founder of defendants: NetCapital.com . . . (the ‘Defendants’) . . . As a manager and officer of the Defendants”)

CX0181-70:13-24 (Depo. “Q. Do you know who ran NetCapital? A. Not technically. I don’t know exactly. I mean, I assume that John had a major influence or controlling influence, but I don’t know who ran it. Q. Why did you assume that John had a

		company.”)
108.	{ }	CX0187-001 { }
109.	John Fanning decided that NetCapital would control most of Jerk’s shares.	CX0181-73:6-11 (Depo. “A. . . .best that I remembered when I was talking to John about the capitalization, he said he wasn’t clear who he wanted the 80 percent to go to, whether he was going to flow it through and include it in NetCapital or he was going to put it in some other legal entity or whatever. So that was discussed as a possibility, the best that I can remember.”)
110.	{ }	CX0187-001-002 (email from Fanning: { }
111.	{ }	CX0466-001 (email from Fanning: { }
112.	{ }	CX0236-001 { } CX0239-001 { } CX00411-004 { } CX00415 { }

113.	Jerk.com was hosted on NetCapital's server.	CX0277-002 (server information for Jerk.com)
	Fanning signed contracts on behalf of Jerk	
114.	John Fanning negotiated and signed employment agreements with individuals working on Jerk.com.	CX0464 ¶ 1 CX0466 { } CX0735 (consulting agreement)
115.	John Fanning signed an agreement with Internet Domains on behalf of Jerk to lease the Jerk.com domain.	CX0526-002 (February 2011 lease with option to purchase the domain name Jerk.com signed by "John Fanning, Jerk LLC")
116.	John Fanning signed service orders with a data hosting company on behalf of Jerk for Jerk.com.	CX0401-002-004 ¶ 6 ("service orders for Jerk, LLC . . . were all signed by John Fanning"); ¶ 8 ("technical contact for the website, www.jerk.com was John Fanning. Mr. Fanning was also the billing contact")
	John Fanning shared address(es) with Jerk	
117.	{ }	<i>Fanning's Answer</i> ¶ 2 ("John Fanning admits that he has done business at 165 Nantasket Avenue, in Hull, MA"); <i>see also Jerk's Answer</i> ¶ 2 CX0427-002 { } CX0417-002, 005 {

		} CX0239-001 (email from Fanning to investor: { }
118.	{ }	<i>Respondent John Fanning's Responses to Complaint Counsel's First Requests for Admission #4</i> ("Jerk, LLC has represented P.O. Box 277, Hingham, MA 02043 as a business address.") CX0056-002 { }
119.	John Fanning's { }	CX0412 { } CX0092: 5:18-19 { }

120. John Fanning received consumer complaints about Jerk.com.

CX0041-002-003 ¶ 6 ("HBS mailed the complaint letters to John Fanning. . . . I also personally called Mr. Fanning on several occasions to express concern about the number of complaints HBS was receiving about jerk.com."); CX0042

CX0401-004 ¶ 11 ("Immedion received various consumer complaints about the

121.	Jerk.com staff worked out of John Fanning's house.	CX0629-002 ¶ 6 ("I contributed to the project out of John Fanning's home during the Summer of 2009.") CX0361 (photo of John Fanning and Jerk staff working at Fanning's house)
	John Fanning handled Jerk's finances	
122.	{ }	CX0411-001-002 (bank records) CX0092: 79:14-80:21 { }
123.	{ }	CX0411-003 (bank records)
124.	{ }	CX0417-001 { } CX0092-108:12-13 { }
125.	{ }	CX0427-001-003
126.	{ }	CX0421-001-002 { }

127.	{ }	CX0418-002-4 (2012 Jerk bank statements)
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128. John Fanning handled the finances and budgeting for Jerk.com.

CX0135-0001 (email from Fanning: “My understanding is that we are back on track and moving forward together again! I know I have to do a little on the financial side asap, and as far as the business dynamics, well I’m sure you can post a few choice pieces of feedback for me on jerk.com!”)

CX0308-001 (email from Fanning: “I took the amount of money we have available, budgeted the money to last until the end of august”)

CX0167-001 (email from Fanning: “Here is what I would like to do on Jerk.com. I would like to define some very small task, pay hourly, and see how it gets done. The first task I proposed was to fix the site from the hacking, but as you pointed out the Romanians seemed to fix that overnight. They

	John Fanning recruited investors and attempted to find capital for Jerk.com	
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129. John Fanning solicited investors for capital to fund Jerk.com.

CX0308-001 (email from Fanning: “I am confident I can bring in additional capital soon, possibly enough to have you work full time or more”)

CX0367-001 (email from Jerk team member to Fanning: {

}

CX0141-001 (email from Fanning: “Still struggling along with jerk.com. No really [sic] money to speak of yet, but I am still trying.”)

CX0122-001 (email from Fanning: “Joe and I thought that we could spend 25-50k in the initial phase working together with you to develop the site to the next level, (jerk.com1.0) while I work in parallel to find resources to continue to finance the company.”)

CX0146-001 (email from Fanning: “I have a few VCs interested in funding jerk.com/reper.com.”)

CX0057-002 ¶ 7 (former intern at Jerk: “In December 2009, John Fanning and I flew from Boston to San Francisco to discuss

		<p>CX0181-156:13-21 (Depo. “Q: Okay. Now, this – the e-mail from John Fanning on March 31st, is that – do you know if that’s John Fanning laying out the executive summary or is that someone else writing it for him? A: I assumed that was John Fanning writing it. Q: Okay. Why did you assume that it’s John Fanning? A: He sent it to me and I have no reason to believe someone else wrote it for him.”)</p>
<p>132.</p>	<p>John Fanning prepared material about Jerk.com for potential investors.</p>	<p>CX0181-154:10-21 (Depo. “Q: Do you know if this executive summary or a later iteration of this executive summary was ever sent to potential investors? A: I believe it was. Q: Do you know if John Fanning ever sent it to potential investors? A: I assume he did? Q: Why do you assume so? A: Because he was raising money and I believe he used it. That was the purpose of us putting it together.”)</p> <p>CX0387-001 (email from Fanning: “We should start with Jerk.com. Show picture of profile growth to 85M. Show picture of traffic growth. Show picture of all the people who show up 1 or 2”)</p>
<p>133.</p>	<p>John Fanning sent updates about Jerk.com to investors.</p>	<p>CX0139-001 (email from Fanning: “I wanted to update you on some of the progress we’ve made so far on Jerk.com – a new venture of mine”)</p> <p>CX0153-001 (“I know how excited you have been to this project in the past and I was hoping you wouldn’t mind too much if I sent you an update. If you are willing to provide a little guidance and feedback I am willing to forgive you for not knowing how great this company will become!”)</p>

	John Fanning attempted to sell Jerk.com	
134.	John Fanning attempted to sell Jerk.com.	CX0144-001 (email from Fanning: “Sorry to say I was not able to sell jerk.com as I hoped.”)
135.	{ }	CX0492-003 (email from Fanning: { })
	John Fanning actively participated in operating Jerk.com	
136.	John Fanning admitted that he was “actively involved” with Jerk.com.	CX0643-001 (email from Fanning: “I want to introduce you to an exciting new venture I am involved in. It’s a little edgy; you can check it out at jerk.com. . . . We have the founder of napster (me), the founder of myspace, and individual, inc. (invented internet news) all actively involved”)
137.	John Fanning directed strategies and set objectives for Jerk.	<p>CX0309-001 (email from Fanning: “As far as whole company objectives, what I meant was, 1. Build our team. 2. Raise capital. 3. Drive Traffic. 4. Build Brand”)</p> <p>CX0181-107:4-7 (Depo. “Q: And from all these conversations about strategy, as you just put it, did you come to the conclusion that John Fanning was in charge of strategy for Jerk, LLC? A: Yeah, I assumed that.”)</p> <p>CX0629-001 ¶ 8 (“I participated in brainstorming discussions on the website’s strategy with John Fanning and other people</p>

		<p>on the team.”)</p> <p>CX0151-002 (email from business consultant to Fanning: “John F. – if we are positioning you as the visionary, we need you to articulate your vision and make sure we are all on the same page.”)</p>
<p>138.</p>	<p>Fanning hired and recruited people and companies to work on Jerk.com, and negotiated their terms of employment.</p>	<p>CX0181-105:7-10 (Depo. “Q: Did you get the sense that it was ultimately John Fanning’s call as to who would be hired for Jerk, LLC? A: Yes.”)</p> <p>CX0438-85:25-86:2 (Depo. “Q: And would you say that John was the one that hired you to work on jerk.com? A: Yes, I think that’s a fair characterization.”)</p> <p>CX0438-10:5-11 (Depo. “Q: Were you paid for your work at Jerk.com? A: Never anything formally, but John would occasionally reimburse for travel, buy lunches, that kind of thing. Q: And who was paying you? Was it John directly, or was it some other company? A: I believe it was John.”)</p> <p>CX0057 ¶ 3 (“I reported directly to John Fanning, the co-founder and CEO of Napster. Mr. Fanning’s venture capital company, NetCapital, oversaw several Internet start-up companies, including Jerk.com.”)</p> <p>CX0304-003 (email from Fanning: “I have some students working on a project I might like you to interface with if possible.”)</p> <p>CX0629-001 ¶ 2 (“Mr. Fanning invited me to work on a website of his called Jerk.com in the capacity of an internship.”)</p> <p>CX0308 (email from Fanning to graphic designer working on Jerk.com: “No, I paid you 4k already, 2k June 1st 2k July 1st 2k August 1st 2k September 1st which is 12k. I</p>

	<p>told you I agree with you about 6k per month but I have to find the money, which I am confident I will, but have not yet. . . . For every hour you worked you are entitled to \$75 worth of shares”)</p> <p>CX0308 (email from Fanning to graphic designer regarding work on Jerk.com: “For every hour you worked you are entitled to \$75 worth of shares at the valuation set by the next money in. We have an agreement that explains how that works which I thought I sent you.”)</p> <p>CX0181-90:3-25 (Depo. (referring to CX0187) “Q. By John was trying to recruit, are you referring to John Fanning or Jonathan []? A. John Fanning. Q. Okay. And was he trying to recruit her to take on the chief marketing officer title? A. Well, that’s what this says. I don’t remember the specifics. . . . Q. Do you remember a conversation with anyone about Lisa? A. I have a vague recollection about talking to John about her, yes. Q. John Fanning; is that right? A. John Fanning, yeah. Q. Do you recall what you guys talked about? A. Just about trying to recruit her and her background or something vJohntea.2(e)91</p>
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		<p>CX0735 { } </p> <p>CX0302 ¶ 3-4 (John Fanning hired a design company to provide web/interface designs for jerk.com)</p>
<p>139.</p>	<p>Jerk staff and outside parties considered John Fanning as the person in charge of Jerk.com.</p>	<p>CX0438-26:5-12 (Depo. “Q. And who would you say led the Jerk.com website? Who was in charge? A. At that time, it certainly seemed to me that it was John Fanning. Q. And do you know who had final decision-making authority over the website? A. When I worked on it, I believe it was John Fanning.”)</p> <p>CX0181-103:4-16 (Fanning “seemed to be running – calling the shots.”)</p> <p>CX0057 ¶ 3 (“Jerk.com was John Fanning’s pet project and at that point in time, he was involved in all decisions about the website of which I was aware.”)</p> <p>CX0109-51: 18-20 (Depo: “Q: Is there anything -- anyone else besides Fanning that you associate with Jerk.com? A: No.”)</p> <p>CX0629-001 ¶ 5 (“I do not know who exactly managed Jerk, LLC, but it was my perception that John Fanning was the person in charge of <u>jerk.com</u>.”)</p>
<p>140.</p>	<p>John Fanning was involved in marketing Jerk.com</p>	<p>CX0440-CX0442 (John Fanning discussed brand identity and strategy for Jerk.com with a marketing firm)</p> <p>CX0668 (email from Fanning: “Once we make jerk.com something that we are not actually embarrassed to have people look at we can work with [] to create some buzz.”)</p> <p>CX0378-004 (John Fanning discussed</p>

	<p>informed to be the manager of the firm in Romania. John Fanning introduced me to Gheorghe David.”)</p> <p>CX0279-001 (Fanning’s testimonial on Software Assist’s website: “Our collaboration with ASSIST software has been a true partnership from the very beginning.”)</p> <p>CX0135-001 (email from Fanning: “We are still using the original Romanian developers for maintenance on the production site in order to relieve you of that burden.”)</p> <p>CX0428 { }</p> <p>CX0181-103:11-22 (Depo. “Q: What made you think that he was running – or calling the shots? A: Just the tenor of our conversations and, you know, various things we would discuss and then he would say that happened or he had a development team in Romania that he was directing and -- Q: he wassay.11 Tc-.0111 [(he</p>
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		<p>affordable order, but he ignored . . . I’m a service provider, not a charity”)</p> <p>CX0663 (email from Fanning: “We have a development team in India now as well as Romania.”)</p> <p>CX0491-001 (email from Fanning: {</p> <p style="text-align: center;">}</p> <p>CX0167-001 (email from Fanning: “the Romanians seemed to fix that over night. They had advantages of already having access, and they built the system”)</p> <p>CX0302 ¶ 6 (“The Company worked with developers hired by John Fanning who were located in India and Romania.”)</p>
	<p>John Fanning participated in the creation of content for Jerk.com</p>	
<p>144.</p>	<p>John Fanning was involved in developing Jerk.com.</p>	<p>CX0200-001 (February 2009 email from Fanning: {</p> <p style="text-align: center;">}</p> <p>CX0122-001 (June 2009 email from Fanning: “Joe and I thought that we could spend 25-50k in the initial phase working together with you to develop the site to the next level, (jerk.com1.0)”)</p> <p>CX0128-0002 (June 2009 email from business consultant to Fanning: “we will require a conference call with you, the chief developer, designer and artist to get a better</p>

		understanding of your vision.”) CX0139-004 (August 2009 email from Fanning: “Our alpha site is up and running”)
145.	{ }	CX0476 (email from Fanning: { })
146.	John Fanning was the one who suggested the heading “Are you a Jerk?” for Jerk.com.	CX0666-001 (email from Fanning: “We should just use the Heading ‘Are you a Jerk?’”)
147.	John Fanning edited the Introduction section on Jerk.com.	CX0669 (email from Fanning: “However, at jerk.com, we believe no jerk should get away with being a jerk, so it is our responsibility to make sure this never happens . . . Say everything in present tense.”)
148.	John Fanning was involved in deciding on the designs for Jerk.com.	CX0438-69:22-25 (Depo. “Q. And did John Fanning typically review design decisions for the Jerk.com website? A. He was certainly involved in the process, yeah.”)
149.	In 2010, John Fanning directed staff to redesign Jerk.com’s main page.	CX0667 (email from Fanning: “We need an immediate redesign and implementation of the main page.”)

150. John Fanning decided when new designs were ready to be published.

	<p>Fanning championed the auto-generation of Jerk.com profiles and deflected concerns from Jerk team members and others about that approach.</p>	
<p>151.</p>	<p>John Fanning advocated in favor of scraping data from Facebook to create profiles on Jerk.com.</p>	<p>CX0438-033:11-22 (Depo. “Q. When talking about scraping from Facebook, was there anyone at Jerk.com who was particularly in favor of this idea? A. I know John was certainly in favor of the idea during the stages where we were making investor pitches. Because it was beneficial to show what kind of capacity the website could handle, to show that it was possible to have that many profiles on the site. Q. Is there anybody else that advocated for that mechanism? A. No one that I can think of, that I spoke to, no.”)</p>
<p>152.</p>	<p>Jerk team members and investors raised suspicions about whether the profiles on Jerk.com were all in fact created by people using Jerk.com.</p>	<p>CX0629-003-4 ¶11-13 (“I expressed my concerns to Mr. Fanning about the way Jerk.com was using information from Facebook to create profiles on Jerk.com”)</p> <p>CX0644-001 (“Hi Gheorghe, I noticed that we are creating a lot of profiles for this month, this is great! Whatever you have done seems to be working fine, but I’m just curious where these profiles are coming from?”)</p> <p>CX0438-57:23-58:7 (Depo. “A. So we thought that having profiles would be -- having a larger number of profiles would increase the likelihood that someone would use the site. Although I certainly remember discussing with Henry and John that, while the number of profiles was great, that wouldn’t necessarily immediately increase traffic, because they weren’t -- no one really had a connection to it. No one really had engaged with the website, so they didn’t really have any compelling reason to use it.”)</p>

CX0438-42:23-43:10 (Depo. “Q. Did the number of users come up in conversation during the pitches to investors? A. Yes, it would occasionally come up. Q. And in what context did it come up? A. Um, there were certainly times when investors would look at the profile growth numbers and they would certainly be a little bit surprised at the large jump in the numbers. Q. And why were they surprised at the large jump in the numbers? A. Because a million users over the course of a month is a large number of people to start using a website.”).

CX0181-137:17-138: (Depo. “Q. Do you recall what was said during that conversation? A. Well, I had raised the question, did the company have the ability or the right to create these profiles by traversing Facebook information? Q. How did you know that the company was creating profiles by traversing Facebook for information? A. John and I talked about it and it had a rapid growth in the number of profiles that were on the site and John explained that it had something to do with getting information off of Facebook. Q. Can you remember any more details about what John said about that issue? A. Just that

		500 people came to Jerk.com because we had those profiles and that number is growing dramatically.”)
	John Fanning controlled whether profiles were added or removed from Jerk.com	
155.	Fanning instructed programmers to create Jerk.com profiles.	<p>CX0640-001 (August 2009 email exchange between Fanning and Romanian developer: “Fix ‘People I know.’ This is very important because we need to create at least 5,000 more profiles before August (3 days and counting). Specifically, make sure the facebook part works.”)</p> <p>CX0492-003 (email from Fanning: {</p> <p style="text-align: right;">}</p>
156.	John Fanning discussed the Facebook API in regards to the creation of profiles on Jerk.com with a Jerk investor.	CX0181-142:9-15 (Depo. “Q: Did he use the term API? A: I believe I remember the term API. Q: And this was in connection with the traversing Facebook issue? A: Something to do with Facebook, but I don’t remember the specifics. But I remember talking about something about Facebook API.”)

157. John Fanning had authority to remove profiles and content from Jerk.com.

CX0401-004 ¶ 11 (Fanning was the point of contact at Jerk for Jerk.com’s dataint

CX0492-03- Twmail from Fanning:

		<p style="text-align: right;">}</p> <p>CX0074 (September 2011 email from Fanning regarding a father’s request to have his 13-year old son’s profile removed from Jerk.com: “This is probably the profile. He looks 13. This looks like he allowed his son of 13 to make a profile in violation of our terms of service. He has made no report of abuse to us. Also if this is in fact the profile, you can see from the comments that no one has said anything inappropriate. I will handle this however you like, including having a lawyer send him a letter. He is the cyberbully.”)</p> <p>CX0075 (September 2011 email from NetCapital partner to Fanning: “I completely understand that you enjoy your whole Jerk.com thing, and I am totally pleased for you to take one of two stps: (1) delete this kids’ profile or (2) make sure that there is clearly no connection between me and Jerk.com. In this case, the dude made the connection between Jerk.com and Netcapital by writing enom.com who told them NetCapital maintains the DNS.”)</p>
	<p><u>Consumer Injury</u></p>	
	<p>Respondents’ creation of Jerk.com profiles harmed consumers</p>	
<p>158.</p>	<p>Consumers paid money to Respondents in an effort to have their Jerk.com profile removed.</p>	<p>CX0001-001 ¶ 2-3; CX0005-001 ¶ 5; CX0026-001-002 ¶ 6; CX0038-001 ¶ 4; CX0040-001 ¶ 6; CX0007-001 ¶ 5 (consumer declarations)</p> <p>CX0422-CX0425 { }</p>

		CX0428 { }
159.	Consumers spent considerable time trying to remove their from Jerk.com profiles of themselves or loved ones.	<p>CX0031-001-002 ¶ 5 (“For some time, I spent almost every hour of every weekend and weeknight emailing Google to remove the link to the Jerk.com profile under my name.”)</p> <p>CX0011-004 ¶ 17 (20-40 hrs); CX0036-002 ¶ 9 (20 hrs); CX0037-001-002 ¶ 7 (30 hrs)</p>
160.	Consumers experienced emotional distress because they initially believed someone they knew created profile of them on Jerk.com.	<p>CX0036-001 ¶ 3 (“I was mortified and embarrassed”)</p> <p>CX0037-001 ¶ 3 (“I was alarmed. I thought someone was messing with me.”)</p> <p>CX0028-001 ¶ 3 (“I was devastated.”)</p>
161.	Consumers suffered from panic attacks, depression, and other health problems after discovering their profiles and photos on Jerk.com.	<p>CX0028-002 ¶ 8 (“[D]iscovering a jerk.com profile associated with it was traumatic and had a negative impact on my health.”)</p> <p>CX0536-001 (“I’ve been having sleepless nights since the day I saw his profile in your website and I keep on crying on why there are people who never stop torturing me”)</p> <p>CX0615-001 (“This has jeopardized [sic] my school, work, and I have seen several psychologists over this.”)</p> <p>CX0540 (“The news of this site using my name and image has caused me great deal of stress, embarrassment and concern that it may effect [sic] my ability to obtain employment in the future”)</p>

<p>162.</p>	<p>Consumers suffered professionally from having profiles of them displayed on Jerk.com.</p>	<p>CX0540-001 (“it may effect [sic] my ability to obtain employment in the future”)</p> <p>CX0541 (“having my name connected to this site has caused serious professional consequences.”)</p> <p>CX0544-001 (“I am trying to find a job closer to home, as I commute an hour back and forth to work and the jerk.com site has come up in two interviews”)</p>
<p>163.</p>	<p>Consumers were concerned about their and their family members’ safety after viewing photos of themselves or of family members on Jerk.com.</p>	<p>CX0627 (“This web site has a picture of my minor 13yea [sic] old daughter. I have dealt</p>

		<p>health and safety are in jeopardy”)</p> <p>CX0545-001 (email from consumer to Jerk: “I have been receiving malicious posts from the man who has harmed my young daughter and is threatening me for nearly a year after I reported the abuse”)</p>
164.	Parents were concerned about online predators after discovering photos of their children on Jerk.com.	<p>CX0592-001 (“I recently discovered a picture of my three children (all under the age of 13) on the jerk.com website. . . . Obviously, in this day and age of online predators, I am very concerned with any images of my kids being online. My only concern is to keep my kids safe. I only ask that jerk.com remove the picture of my children from their website.”)</p>
165.	Criminal justice professionals were concerned that the existence of a Jerk.com profile would endanger their safety.	<p>CX0532-001 (“Jerk.org is endangering my safety by making it possible for anyone dealing with the criminal justice systems to go online and post sensitive information about me and other justice system participants.”)</p>
166.	Consumers and investors raised concerns that Jerk.com infringed consumers’ copyrights.	<p>See CCSMF 57-58 (Respondents took millions of photos on Facebook and posted them on Jerk)</p> <p>CX0181-139:1-10 (Depo. “Q: Did you raise a concern that it might be not legal? A: Yes. Q: Why did you raise that concern? A: I just didn’t know. It seemed, you know – it seemed like we were getting some data off of Facebook and I don’t know whether – I had some vague background in copyright law from my days at Individual, and there was a question of can you get this kind of directory level information, you know, off of some other source.”)</p> <p>CX0532 (“Jerk.com generated a profile of me using a copyrighted photograph whose use I</p>

	had not consented to.”)
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167. Consumers avoided the Internet after

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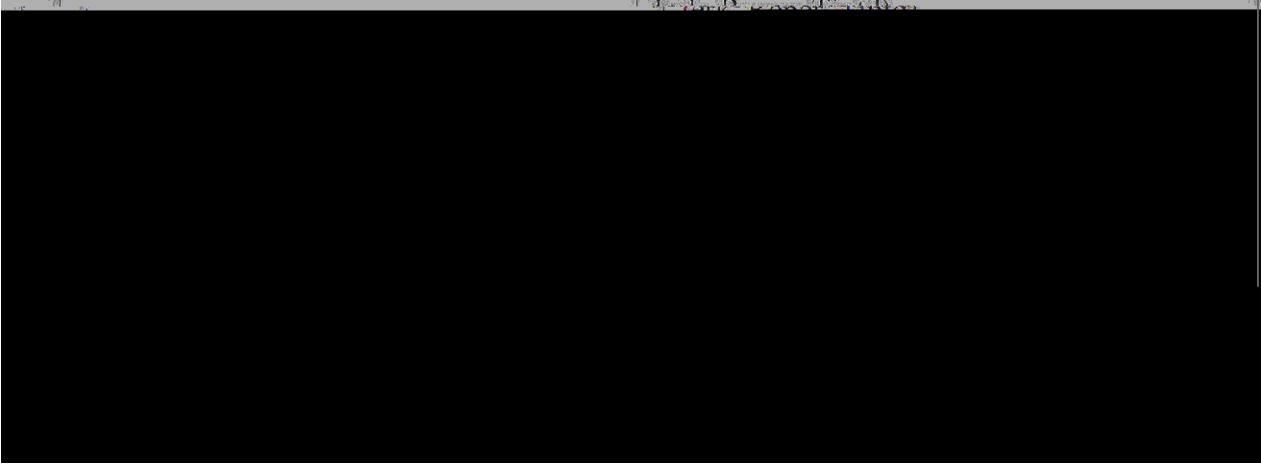
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the company? ... A: Yeah, I had the sense.
Q: What was it? A: I thought it was primarily to make money.”)

CX0079 (John Fanning: “This can be run from anywhere. This is what is getting you the island in the caribbean [sic]”)

CX0078 (John Fanning: “If you have input now would be a good time because soon you will be running jerk.com from caymen [sic] islands”)

CX0057-001 ¶ 4 (former intern at Jerk: “Some people, including Mr. Fanning, believed the website should be monetized by charging businesses and high-profile users to remove negative postings about themselves,

		the kind of features we have been talking about, in terms of people writing stories about other people, voting for jerk and saint.")
182.	John Fanning is associated with a reputation website similar to Jerk.com and Reper.com called "tiptd," which stood for "things I promised to do."	CX0281 (tiptd website containing profiles for Jerk staff, including John Fanning, and the same terms as conditions as Jerk.com) CX0634-001 (NetCapital ----SMI Engine----
		

Dated: September 26, 2014

Respectfully submitted,



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