

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

04 12 2017

In the matter of:)	
)	
Jerk, LLC, a limited liability company,)	DOCKET NO. 936
)	
Also d/b/a JERK.COM, and)	
)	PUBLIC
John Fanning,)	
Individually and as a member of)	
Jerk, LLC,)	
)	
Respondents.)	
)	

RESPONDENT JOHN FANNING’S RESPONSE TO
ORDER SCHEDULING BRIEFING FOLLOWING REMAND

Respondent John Fanning (“Fanning”) hereby responds to the Federal Trade Commission’s (the “Commission”) March 3, 2016 “Order Scheduling Briefing on Remand” (“Briefing Order”).

The Briefing Order requiring brief pertaining to “the compliance monitoring applica to Mr. Fanning addressed in Paragraph V of the Commission’s Final Order” . . . “including proposed order language” contravenes the opinion of the United States Court of Appeals First Circuit (“First Circuit”) in Fanning v. Federal Trade Commission, 821 F.3d 164 (1st C 2016). The First Circuit struck in its entirety the Commission’s Compliance Monitoring provision at Paragraph VI requiring Fanning, for a period of ten (10) years, to notify the Commission of “the discontinuance of his current business or employment, or of his affiliation with any new business or employment” including addresses, telephone numbers, and a description of the nature of the business or employment and Fanning’s duties and responsibilities:

further specifically noted that the orders cited by the FTC were far less burdensome in terms duration than the ten (10) year notification period the FTC imposed upon Fanning:

Those orders that do require individuals also provide descriptions of their employers and business last only for three to five years. See FTC v. Neovi, No. 3:06-cv-1952, ECF No. 118, at 10 (S.D. Cal. 7, 2009) (requiring defendant to report change in employment with name, address, and description of business for five years); FTC v. Pac. First Banc, 472 F. Supp. 2d 981, 988 (N.D. Ill. 2007) (requiring defendant to report name, address, and description of employment or business for five years); FTC v. Gill, 1 F. Supp. 2d 1030, 1051 (C.D. Cal. 1999) (requiring defendant to report name, address, and description of employment or business for three years).

Fanning v. Federal Trade Commission, 821 F.3d at 177, n. 9.

at 177 n.9

Respectfully submitted,

JOHN FANNING,

By his attorney,

/s/ Peter F. Carr, II

Peter F. Carr, II

ECKERT, SEAMANS, CHERIN & MELLOTT, LLC

Two International Place, 16th Floor

Boston, MA 02110

617.342.6800

Dated: April 12, 2017

CERTIFICATE OF SERVICE

I hereby certify that on April 12, 2017, I caused to be served a true and accurate copy of the foregoing to be served electronically through the FTC filing system and I caused a true and accurate copy of the foregoing to be served as follows:

One electronic copy to the Office of the Secretary:

Donald S. Clark, Secretary
Federal Trade Commission
600 Pennsylvania Ave., N.W., Room H-159
Washington, DC 20580
Email: secretary@ftc.gov

One electronic copy to the Office of the Administrative Law Judge:

The Honorable D. Michael Chappell
Chief Administrative Law Judge
600 Pennsylvania Avenue, N.E., Room H-110
Washington, DC 20580
Email: oalj@ftc.gov

One electronic copy to the Office of Counsel for the Federal Trade Commission:

Sarah Schroeder
Federal Trade Commission
901 Market Street, Suite 670
San Francisco, CA 94103
Email: sschroeder@ftc.gov

One electronic copy via email to Counsel for Jerk, LLC:

Alexandria B. Lynn
48 Dartmouth Street
Watertown, MA 02472
Email: ab.lynn@outlook.com

/s/ Peter F. Carr, II
Peter F. Carr, II

Dated: April 12, 2017

Notice of Electronic Service

I hereby certify that on April 12, 2017, I filed an electronic copy of the foregoing Respondent John Fanning's Response to Order Scheduling Briefing Following Remand, with:

D. Michael Chappell
Chief Administrative Law Judge
600 Pennsylvania Ave., NW
Suite 110
Washington, DC, 20580

Donald Clark
600 Pennsylvania Ave., NW
Suite 172
Washington, DC, 20580

I hereby certify that on April 12, 2017, I served via E-Service an electronic copy of the foregoing Respondent John Fanning's Response to Order Scheduling Briefing Following Remand, upon:

Sarah Schroeder
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Complaint

I hereby certify that on April 12, 2017, I served via other means, as provided in 4.4(b) of the foregoing Respondent John Fanning's Response to Order Scheduling Briefing Following Remand, upon:

Alexandria Lynn
Alexandria Beth Lynn
Alexandria B. Lynn, Esq.
alex.lynn@codelaw.com
Respondent

Peter Carr
Attorney