

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**COMMISSIONERS:       Maureen K. Ohlhausen, Acting Chairman  
                              Terrell McSweeney**

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

~~DISCLOSURE~~ **COMPLIANCE MONITORING REQUIREMENT**

On March 13, 2015, the Commission issued an Opinion deciding that Respondents Jerk, LLC and John Fanning had engaged in deceptive conduct in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a). *Jerk, LLC*, 159 F.T.C. 885 (2015). An accompanying Final Order granted cease-and-desist and other relief. *Id.* at 939-44. The United States Court of Appeals for the First Circuit affirmed the Commission’s finding of liability and sustained all aspects of the Commission’s remedial order other than a compliance monitoring provision, which was remanded to the Commission for further consideration. *Fanning v. FTC*, 821 F.3d 164 (1st Cir. 2016), *cert. denied*, 137 S. Ct. 627 (Jan. 9, 2017). This Order addresses the remanded portion of the compliance monitoring requirement to reflect the court’s rulings.

**BACKGROUND**

This proceeding arose from an administrative complaint, which alleged that Respondents Jerk, LLC and John Fanning engaged in deceptive acts or practices through the operations of their website, Jerk.com. Jerk.com is a social media website that invited users to create profiles of other individuals and to rate other individuals as a “jerk” or “not a jerk.” The Commission found that Respondents had falsely represented that content on Jerk.com, including the names and photographs in profiles, had been submitted by the website’s users and reflected users’ views of the profiled individuals, when in fact the content was almost entirely “scraped” from Facebook by Jerk itself or those under Jerk’s control. *Jerk, LLC*, F.T.C. at 902-06. The Commission further determined that Jerk.com had falsely

claimed that consumers who paid a \$30 membership fee would receive additional benefits, including the ability to dispute information posted on the site, but in fact had provided nothing in return for the membership fees. *Id.* at 912-16. The Commission found that Mr. Fanning had the authority to control, and controlled and participated directly in, Jerk's unlawful conduct and concluded that he was individually liable for Jerk's deceptive acts. *Id.* at 917-27.

Mr. Fanning sought judicial review.<sup>1</sup> The court of appeals sustained the Commission's findings that

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compliance monitoring requirement could be reduced to five years while still providing appropriate protection. *Id.* at 7-8.

Requiring individual respondents who have previously controlled or participated in deceptive conduct to report changes in employment and business affiliation is generally an important element in remedying deception. It has long been recognized that, once the Commission has found a respondent to have engaged in deceptive practices, it may impose remedies that reach broadly enough “to prevent respondent[] from engaging in similarly illegal practices in [the] future.” *FTC v. Colgate Palmolive Co.*, 380 U.S. 374, 395 (1965); *cf. FTC v. Ruberoid Co.*, 343 U.S. 470, 473 (1952) (noting, in a price discrimination case, that the Commission “must be allowed effectively to close all roads to the prohibited goal, so that its order may r m be aosmol3.9[(r m)l20 Tc 0 T 2(y)20( t)8 0 Tpa69lc 0 Tw [vi(f)-6(d g)10(oe(imin)2(am85x(bi)-2l

*Mktg Concepts, Inc.*, 648 F. Supp. 2d 202 (D. Mass. 2009), *aff'd*, 624 F.3d 1 (1st Cir. 2010), the trial court characterized monitoring provisions of two orders that, *inter alia*, required defendants to inform the FTC of changes in their employment or business activities as “reasonable and necessary to ensure that . . . the FTC has the ability to monitor compliance with the orders and prevent future illegal conduct.”<sup>4</sup>

Here, the Commission has good reason to require that Mr. Fanning report changes in his employment or business activities as part of the Commission’s compliance monitoring. The Commission found Mr. Fanning individually liable for multiple deceptive acts that affected several aspects of Jerk.com’s website. *See Jerk, LLC*, 159 F.T.C. at 917-27 (finding liability for 35.96 0 Td [(h)-9.9(ct)Cc2(p)-4(t[(af)-T>Cc2(fm.88 0Td (e)(d)2(in)2(g50b4(t)-2(42a.9(ct2c-3.9( r)52( r)-dtd

establishes a history of disregard for the Final Order's constraints and deprives the Commission of information it needs to protect the public interest. It illustrates and reinforces the Commission's ongoing need for knowledge of changes in Mr. Fanning's places of employment and business activities in order to monitor his future compliance.

Mr. Fanning argues that if the FTC refuses to strike his compliance monitoring obligations in their entirety, the requirement that he report his affiliation with any new business

regarding complaints or inquiries and for the maintenance and availability of advertisements and promotional materials). In view of the totality of concerns raised by Mr. Fanning's conduct, including his deceptive conduct in connection with Jerk.com and his failure to file a required compliance report, we find a five-year compliance monitoring requirement – running from the time of issuance of the Final Order and requiring retroactive notification for the specified changes of business or employment that occurred between issuance of the Final Order and the effective date of this order – necessary and appropriate for the continued protection of the public. Accordingly,

**IT IS ORDERED THAT:**

1. Section VI of the Commission's Final Order in this proceeding, issued on March 13, 2015, is hereby amended to read:

**VI.**

**COMPLIANCE MONITORING – JOHN FANNING**

**IT IS FURTHER ORDERED** that John Fanning, for a period of five (5) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his current business or employment, or of his affiliation with any new business or employment that involves electronic commerce, social media, or the online collection or use of consumer data that can be reasonably linked to a specific consumer, computer, or other device. The notice shall include respondent's new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities. Unless otherwise directed by a representative of the Commission in writing, all notices required by this Part shall be emailed to [Debrief@ftc.gov](mailto:Debrief@ftc.gov) or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington DC 20580. The subject line must begin: In re Jerk, LLC.

2. All portions of the Commission's Final Order in this proceeding, issued on March 13, 2015, other than Section VI, shall remain in effect without modification.

By the Commission.

Donald S. Clark,  
Secretary

SEAL:

ISSUED: September 28, 2017