

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

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

COMPLAINT

The Federal Trade Commission, having reason to believe that Jerk, LLC, a limited liability company, and John Fanning, individually and as a member of Jerk, LLC, (“respondents”), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Jerk, LLC, is a Delaware limited liability company, also doing business as JERK.COM, with its principal address at P.O. Box 277, Hingham, MA 02043.
2. Respondent John Fanning is a member and manager of Jerk, LLC. Individually or in concert with others, he has formulated, directed, controlled, or had authority to control the acts and practices of Jerk, LLC, including the acts or practices alleged in this complaint. His principal office or place of business is 165 Nantasket Avenue, Hull, MA 02045.
3. The acts and practices of respondents, as alleged herein, have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.

Jerk, LLC’s Business Practices

4. From 2009 until 2013, respondents operated a purported social networking website estimated to contain between 73.4 and 81.6 million unique consumer profiles. At various times, the website was located at the following urls: www.jerk.com, www.jerk.be, and www.jerk.org (collectively “Jerk”). On Jerk, users could create profiles of other people using the “Post a Jerk” feature. Although Jerk, LLC, claims that its website contained only user-generated content, respondents actually created or caused to be created the vast majority of Jerk profiles using information from Facebook.

5. Respondents earned revenue by selling “memberships” for \$30, by charging consumers a \$25 customer service fee to contact the website, and by placing third-party advertisements on Jerk.

Jerk Profiles and Membership

6. Jerk profiles contained a profile subject’s first and last name. Directly underneath the profile subject’s name were voting buttons that any user could click to vote whether the person was a “Jerk” or “not a Jerk.” Many profile subjects were identified as a “Jerk” or “not a Jerk.” The profiles also contained fields where any user could enter the profiled subject’s age, address, mobile phone number, email address, occupation, school, employer, home phone number, work phone number, license plate number, and Twitter, MySpace, LinkedIn, and eBay account information.



Figure 1 (Exhibit A) (photo and identifying information redacted by the FTC).

Jerk profiles also contained a comment field for users to write comments about the profiled subject. Some profiles included comments such as “Omg I hate this kid he\’s such a loser,” “Address: gay boulevard,” and “just can go f**cking slaughter herself . . . Nobody in their right mind would love you . . . not even your parents love [you].” (Exhibit B-13, B-14, B-16, filed under seal).

7. At times material to the complaint, Jerk had profiles for consumers of all ages, including children. (Exhibit B - filed under seal). An estimated 24.5 to 33.5 million profiles contained a large photo of the profiled subject. An estimated 2.7 to 6.8 million Jerk profiles contained a photo of a child who appeared to be under age 10. Some photos featured intimate family moments, including children bathing and a mother nursing her child. Often, Jerk profiles featured photographs of children, which were collected without their or their parents’ knowledge or consent. Numerous consumers have complained that photographs and other information about them on Jerk were originally posted on Facebook using controls that enabled users to designate material for dissemination only to a limited group, and that the information was not designated for public viewing.

8. Respondents have disseminated or have caused to be disseminated statements to consumers about Jerk memberships and the source of Jerk profiles and their content, including but not necessarily limited to:

a. “Welcome to Jerk

.....

Want to join the millions of people who already use Jerk for important updates for business, dating, and more?”

(Exhibit C, webpage on Jerk)

b. “About Us: jerk.com and Jerk LLC

.....

4. Online Content

Opinions, advice, statements, offers, or other information or content made available through jerk.com are those of their respective authors and not of Jerk LLC.”

(Exhibit D, webpage on Jerk)

c. “Post a Jerk

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.”

(Exhibit E, webpage on Jerk)

d. “Find out what your ‘friends’ are saying about you behind your back to the rest of the world!”

(Exhibit F, respondents’ Twitter account)

- e. “Remove Me!
Just because you have a profile on Jerk does not mean you are a jerk. Less than 5% of the millions of people on Jerk are jerks. Jerk is where you find out if someone is a jerk, is not a jerk, or is a saint in the eyes of others. No one’s profile is ever removed because Jerk is based on searching free open internet, searching databases and it’s not possible to remove things from the Internet. You can however use Jerk to manage your reputation and resolve disputes with people who you are in conflict with. There are also additional paid premium features that are available [hyperlink to Jerk’s sign-in page].”

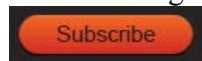
(Exhibit G, webpage on Jerk)

- f. The sign-in link described in paragraph 8.e directs consumers to a subscription page, which states:

“Subscribers on Jerk yourself [sic] and receive free benefits including:

1. Fast notifications of postings about you!
2. Updates on people you know and are tracking.
3. Search for people you know, and read about people you are interested in.
4. Enter comments and reviews for people you interact with.
5. Help others avoid the wrong people.
6. Praise those who help you and move good people closer to sainthood!”

The following button is directly below the list of subscriber benefits:



(Exhibit C, webpage on Jerk)

- g. The “Subscribe” button described in paragraph 8.f directs consumers to a payment form, which includes the following statement at the top:

“Become a Subscriber

... .

You must be a subscriber member in order to create a dispute.”

(Exhibit H, webpages on Jerk)

9. Numerous consumers, including parents and job searchers, discovered Jerk profiles of themselves or family members. Jerk profiles often appeared in search engine results when a consumer searched for an individual’s name. In numerous instances, consumers believed that the existence of a Jerk profile on them indicated that someone who knew them created their Jerk profile. As described in Paragraph 8, respondents represented that profiles reflected the views of other Jerk users.

10. Although Jerk contained some user-generated content, Respondents created the vast majority of profiles using improperly obtained Facebook information. Facebook is a social network that currently has over 1.2 billion members. Facebook permits third-party developers to integrate websites and applications with Facebook. Developers can access data for all Facebook users through Facebook’s application programming interfaces (“APIs”), which provide sets of

tools developers can use to interact with Facebook. Developers that use the Facebook platform must agree to Facebook's policies, which include (1) obtaining users' explicit consent to share certain Facebook data; (2) deleting information obtained through Facebook once Facebook disables the developers' Facebook access; (3) providing an easily accessible mechanism for consumers to request the deletion of their Facebook data; and (4) deleting information obtained from Facebook upon a consumer's request.

11. Beginning in February 2010, respondents, directly or indirectly, registered numerous websites with Facebook, including Jerk.com, Jerk2.com, Jerk3.com, Jerk4.com, and Jerk.be. Respondents accessed Facebook's data through Facebook's APIs and downloaded names and photographs of Facebook users. Respondents used this data to create unique Jerk profiles for millions of consumers.

12. As described in Paragraph 8.e-g, respondents represented that, by purchasing a subscription to Jerk, users obtained "additional paid premium features," including the ability to dispute information posted on Jerk and receive fast notifications and special updates. Consumers subscribed to Jerk by paying \$30 for a standard membership. Numerous consumers believed that purchasing a Jerk membership would permit them to alter or delete their Jerk profile and dispute false information on their profile. In numerous instances, consumers who paid for a standard membership received nothing from respondents in exchange for their payment of the membership fee.

13. Respondents made it difficult for consumers to contact Jerk. Respondents charged consumers a \$25 fee to email Jerk's customer service department. (Exhibit I, webpage on Jerk). Numerous consumers were hesitant to provide their credit card information to Jerk and thus had no easy mechanism to contact the company. Some savvy consumers contacted Jerk's registered agent or web host and requested that respondents delete their photo, or a photo of their child, which was originally posted on Facebook. In numerous instances, Jerk did not respond to consumers' requests and did not remove their photos from Jerk's website.

14. Respondents also were unresponsive to law enforcement requests to remove harmful profiles. In at least one instance, respondents ignored a request from a sheriff's deputy to remove a Jerk profile that was endangering a 13-year old girl.

COUNT I
RESPONDENTS' DECEPTIVE REPRESENTATION
REGARDING SOURCE OF JERK CONTENT

15. Through the means described in Paragraph 8, respondents represented, expressly or by implication, that content on Jerk, including names, photographs, and other content, was created by Jerk users and reflected those users' views of the profiled individuals.

16. In truth and in fact, in the vast majority of instances, content on Jerk was not created by Jerk users and did not reflect those users' views of the profiled individuals. Respondents populated or caused to be populated the content on the vast majority of Jerk profiles by taking information from Facebook in violation of Facebook's policies, including by (1) failing to obtain users' explicit consent to collect certain Facebook data, including photographs; (2) maintaining information obtained through Facebook even after respondents' Facebook access was disabled; (3) failing to provide an easily accessible mechanism for consumers to request deletion of their Facebook data; and (4) failing to delete data obtained from Facebook upon a consumer's request. Therefore, the representation set forth in Paragraph 15 was, and is, false or misleading.

COUNT II
RESPONDENTS' DECEPTIVE REPRESENTATION
REGARDING JERK MEMBERSHIPS

17. Through the means described in Paragraph 8, respondents represented, expressly or by implication, that consumers who subscribe to Jerk by paying for a standard membership would receive additional benefits, including the ability to dispute information posted on Jerk.

18. In truth and in fact, in numerous instances, consumers who subscribed to Jerk by paying for a standard membership received nothing in return for their payment. Therefore, the representation set forth in Paragraph 17 was, and is, false or misleading.

19. Respondents' practices, as alleged in this complaint, therefore constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

NOTICE

Notice is hereby given that the twenty-seventh day of January, 2015, at 10 a.m., is hereby fixed as the time, and the Federal Trade Commission offices, 600 Pennsylvania Avenue, N.W., Room 532-H, Washington, D.C. 20580, as the place when and where a hearing will be had before an Administrative Law Judge of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under the Federal Trade Commission Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in this complaint.

You are notified that the opportunity is afforded you to file with the Federal Trade Commission an answer to this complaint on or before the 14th day after service of it upon you. An answer in which the allegations of the complaint are contested shall contain a concise statement of the facts constituting each ground of defense; and specific admission, denial, or explanation of each fact alleged in the complaint or, if you are without knowledge thereof, a statement to that effect.

Allegations of the complaint not thus answered shall be deemed to have been admitted. If you elect not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that you admit all of the material facts to be true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the complaint and, together with the complaint, will provide a record basis on which the Commission shall issue a final decision containing appropriate findings and conclusions and a final order disposing of the proceeding. In such answer, you may, however, reserve the right to submit proposed findings of fact and conclusions of law under § 3.46 of the Federal Trade Commission's Rules of Practice for Adjudicative Proceedings.

Failure to answer within the time above provided shall be deemed to constitute a waiver of your right to appear and contest the allegations of the complaint and to authorize the Commission, without further notice to you, to find the facts to be as alleged in the complaint and to enter a final decision containing appropriate findings and conclusions and a final order disposing of the proceeding.

The Administrative Law Judge will schedule an initial prehearing scheduling conference to be held not later than 10 days after the answer is filed by the last answering respondent in the complaint. Unless otherwise directed by the Administrative Law Judge, the scheduling conference and further proceedings will take place at the Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Room 532-H, Washington, D.C. 20580. Rule 3.21(a) requires a meeting of the parties' counsel as early as practicable before the prehearing scheduling conference, but in any event no later than five days after the answer is filed by the last answering respondent. Rule 3.31(b) obligates counsel for each party, within five days of receiving a respondent's answer, to make certain initial disclosures without awaiting a formal discovery request.

The following is the form of order which the Commission has reason to believe should issue if the facts are found to be as alleged in the complaint. If, however, the Commission should conclude from record facts developed in any adjudicative proceedings in this matter that the proposed order provisions might be inadequate to fully protect the consuming public, the Commission may order such other relief as it finds necessary or appropriate.

Moreover, the Commission has reason to believe that, if the facts are found as alleged in the complaint, it may be necessary and appropriate for the Commission to seek relief to redress injury to consumers, or other persons, partnerships or corporations, in the form of restitution for past, present, and future consumers and such other types of relief as are set forth in Section 19(b) of the Federal Trade Commission Act. The Commission will determine whether to apply to a court for such relief based on the adjudicative proceedings in this matter and such other factors as are relevant to consider the necessity and appropriateness of such action.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. Unless otherwise specified, “respondents” shall mean Jerk, LLC, a limited liability company, its successors and assigns; and John Fanning, individually and as a member of the company.
2. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
3. “Customer Information” shall mean information relating to consumers who purchased products or services from Jerk, LLC, including, but not limited to, a consumer’s name, address, credit or debit card number, and billing information.
4. “Individual online profile” shall mean a profile of an individual that contains personal information.
5. “Minor” shall mean an individual under the age of 18.
6. “Personal information” shall mean individually identifiable information from or about an individual consumer including, but not limited to: (a) a first and last name; (b) a home or other physical address, such as a name of a street, city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or a screen name; (d) a telephone number; (e) a Social Security number; (f) a driver’s license number or other government-issued identification number; (g) a bank account, debit card, or credit card account number; or (h) photographs, videos, or audio files that contain an individual’s image or voice.

I.

PROHIBITION ON MISREPRESENTING MEMBERSHIP BENEFITS AND THE SOURCE OF CONTENT ON A WEBSITE

IT IS ORDERED that respondents and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device in connection with the marketing, promoting, or offering for sale of any good or service, shall not misrepresent, or assist others in misrepresenting, in any manner, expressly or by implication:

- A. the source of any personal information;
- B. the benefits of joining any service; or
- C. any other fact material to consumers.

II.

PROHIBITION ON MISREPRESENTING COMPLIANCE WITH A COMPANY'S USER AGREEMENTS, PRIVACY POLICY, OR CONTRACT PROVISIONS

IT IS FURTHER ORDERED that respondents and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device in connection with the marketing, promoting, or offering for sale of any good or service, shall not make any misrepresentation or assist others in making any misrepresentation concerning compliance with any provision of any user agreement, privacy policy, or contract provision, pertaining to the collection, use, or disclosure of consumers' personal information.

III.

PROHIBITION ON MISREPRESENTING PRIVACY PROTECTIONS

IT IS FURTHER ORDERED that respondents and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with respondents' operation of any website or other online service in or affecting commerce, shall not misrepresent in any manner, expressly or by implication, the extent to which any respondent maintains and protects the privacy and confidentiality of any personal information, including, but not limited to, misrepresenting: (1) the purposes for which any respondent collects and uses personal information, (2) the extent to which consumers may exercise control over the collection, use, or disclosure of personal information, and (3) the use, disclosure, or deletion of a consumer's personal information.

IV.

DISPOSITION OF CUSTOMER DATA AND ILLEGALLY OBTAINED PERSONAL INFORMATION

IT IS FURTHER ORDERED that respondents are permanently restrained and enjoined from:

- A. Disclosing, using, selling, or benefitting from customer information, including the name, address, telephone number, email address, social security number, other identifying information, or any other data that enables access to a customer's account (including a credit card, bank account, or other financial account), that any respondent obtained prior to entry of this Order in connection with the operation of Jerk, LLC;

- B. Disclosing, using, selling, or benefitting from personal information that any respondent obtained prior to entry of this Order in connection with the operation of Jerk, LLC; and
- C. Failing to dispose of personal information and customer information in all forms in their possession, custody, or control that any respondent obtained prior to entry of this Order in connection with the operation of Jerk, LLC, within thirty (30) days after entry of this Order.

Provided, however, that information need not be disposed of, and may be disclosed, to the extent requested by a government agency or required by law, regulation, or court order.

V.
MONITORING PROVISIONS

IT IS FURTHER ORDERED that respondents shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials containing any representation covered by this order, including but not limited to respondents' terms of use, end-user license agreements, frequently asked questions, privacy policies, and other documents publicly disseminated relating to: (a) the collection of data; (b) the use, disclosure or sharing of such data; and (c) opt-out practices and other mechanisms to limit or prevent such collection of data or the use, disclosure, or sharing of data;
- B. All materials that were relied upon in disseminating any representation covered by this order;
- C. Complaints or inquiries relating to any website or other online service, and any responses to those complaints or inquiries;
- D. Documents that are sufficient to demonstrate compliance with each provision of this order; and
- E. Documents that contradict, qualify, or call into question any respondent's compliance with this order.

VI.
ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that respondents shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondents shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

VII.
COMPLIANCE MONITORING – JERK, LLC

IT IS FURTHER ORDERED that respondent Jerk, LLC, and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondents learn less than thirty (30) days prior to the date such action is to take place, respondents shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission in writing, all notices required by this Part shall be emailed to 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.

VIII.
COMPLIANCE MONITORING – JOHN FANNING

IT IS FURTHER ORDERED that respondent John Fanning, for a period of ten (10) 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. 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 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.

IX.
COMPLIANCE REPORTING

IT IS FURTHER ORDERED that respondents, within sixty (60) days after the date of service of this order, shall each file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of their own compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, they shall submit additional true and accurate written reports.

X.
ORDER TERMINATION

This order will terminate twenty (20) years from the date of its issuance, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

IN WITNESS WHEREOF, the Federal Trade Commission has caused this complaint to be signed by the Secretary and its official seal to be affixed hereto, at Washington, D.C., this second day of April, 2014.

By the Commission.

Donald S. Clark
Secretary

[SEAL]