

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

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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.)
)
_____)

COMPLAINT COUNSEL’S STATEMENT OF MATERIAL FACTS
AS TO WHICH THERE IS NO GENUINE ISSUE FOR TRIAL

Pursuant to Section 3.24 of the Commission’s Rules of Practice, and in support of Complaint Counsel’s Motion for Summary Decision, Complaint Counsel submits this separate statement of material facts as to which there is no genuine issue for trial.

| No. | Fact | Citation |
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| | <u>Respondents</u> | |
| 1. | Jerk, LLC (“Jerk”) is a Delaware limited liability company. | <p><i>Answer of Respondent Jerk</i> (filed May 19, 2014) (“<i>Jerk’s Answer</i>”) ¶ 1</p> <p><i>Answer of Respondent John Fanning</i> (filed May 19, 2014) (“<i>Fanning’s Answer</i>”) ¶ 1</p> |
| 2. | Jerk was formed in January 2009. | <p>CX0286-001 (Jerk’s response to the Commission’s civil investigative demand (“CID Response”): { }</p> <p>CX0041-002 ¶ 4 (Declaration of Jerk’s registered agent, Harvard Business Services, Inc.: “On January 21, 2009, HBS officially incorporated Jerk LLC as a Delaware limited liability company.”)</p> |
| 3. | Jerk operated the website Jerk.com. | <p>CX0291-001 (Jerk’s Petition to Quash: “Jerk, LLC operates the website Jerk.com”)</p> <p>CX0286-001 # 1 (Jerk’s CID Response: { }</p> <p>CX0629-001 ¶ 5 (“Jerk, LLC was the company behind the Jerk.com website.”)</p> |
| 4. | At various times, profiles of people were visible on Jerk.com, Jerk.org and Jerk.be. | <p>CX0259 (Jerk.com profiles)</p> <p>CX0258 ¶ 17 (Declaration of Kelly Ortiz: “On or about May 23, 2013, pages that I had previously seen on jerk.com were visible on the website jerk.org.”)</p> <p>CX0032-001 ¶ 3 (“I clicked on the Google search link, and it took me to a profile web page of my son’s name on www.Jerk.be.”)</p> |

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| <p>5.</p> | <p>Jerk has used 165 Nantasket Avenue, Hull, MA 02045 as a business address.</p> | <p>CX0125-001 (email exchange between a Jerk investor and Fanning: Q. “Do you have the address for Jerk llc.?” A. “165 Nantasket Ave Hull Ma 02045”)</p> <p>CX0427-002</p> <p>CX0417-002, 005</p> |
| <p>6.</p> | <p>Jerk has used P.O. Box 277, Hingham, MA 02043 as a business address.</p> | <p><i>Respondent John Fanning’s Responses to Complaint Counsel’s First Requests for Admissions #4</i> (filed May 29, 2014) (“Jerk, LLC has represented P.O. Box 277, Hingham, MA 02043 as a business address.”)</p> <p>CX0507 { }</p> <p>CX0413-CX0416, CX0418-CX0419 (Jerk’s bank statement)</p> <p>CX0427-002 (Jerk.com’s { } application)</p> <p>CX0421-002 (Jerk’s { } application)</p> |
| <p>7.</p> | <p>Jerk has used {155 George Washington Blvd., Hull, MA 02045} as a business address.</p> | <p>CX0412 { }</p> |
| <p>8.</p> | <p>John Fanning is the founder and a member of Jerk.</p> | <p><i>See infra, Complaint Counsel’s Statement of Material Facts as to Which There is No Genuine Issue</i> (“CCSMF”), 97 to 105</p> |

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| <p>9.</p> | <p>John Fanning has participated directly in or had the authority to control the acts or practices at issue.</p> | <p>See CCSMF 97 to 157</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>14.</p> | <p>Jerk.com was a website where users could vote someone a “Jerk” or “not a Jerk.”</p> | <p>Jerk.com website: CX0048-004 (profiles included “Jerk” and “not a Jerk” voting buttons) CX0048-032 (“Jerk is where you find out if someone is a jerk, is not a jerk, or is a saint in the eyes of others.”) CX0231-001 (“Executive Summary . . . Jerk.com, was the company’s first entry into mass engagement of attitudes towards others. As the site’s name suggests, it calls on a more</p> |

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| | | <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> |
| <p>15.</p> | <p>Respondents leased the domain name Jerk.com from Internet Domains, a company that leases domain names.</p> | <p>CX0526-002 (February 2011 lease with option to purchase the domain name Jerk.com signed by “John Fanning, Jerk LLC”)</p> <p>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 have every right to demand payment from a named party until the agreement changes.”)</p> |
| <p>16.</p> | <p>Respondents launched Jerk.com online in February 2009.</p> | <p>CX0664-001 (email from web designer to potential investor, copying Fanning: “We started Jerk.com in February 2009. As John probably discussed with you, it is a little edgy, and asks the question, ‘Is this person a Jerk? Yes/no?’”)</p> <p>CX0079-002 (January 2009 chat between Fanning and business partner: “You are the first real un prejudiced user to use [Jerk.com].”)</p> |
| <p>17.</p> | <p>By the summer 2009, Jerk.com still had few actual users.</p> | <p>CX0057 ¶ 8 (former intern at Jerk: “During my time at Jerk.com [September 2009-June 2010], the website was not popular and had little user-generated content. Most of the profiles were bulk loaded from Facebook.”)</p> <p>CX0640-001 (July 2009 email from</p> |

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| | | Romanian programmer to Fanning: “we have created 7000 profiles so far”) |
| 18. | In the summer of 2009, programmers hired by John Fanning began auto-generating Jerk.com profiles using data from Facebook. | <p>CX0640-001 (July 2009 email exchange between Fanning and Romanian developer: “Specifically, make sure the Facebook part [w]orks. – we have created 7000 profiles so far – at the end of the day we will have 20,000 new profiles.”)</p> <p>CX0629-003-4 ¶ 11 (“Around August 2009, I noticed that thousands of new profiles per day were being added to Jerk.com – a much higher pace than before . . . I found this marked growth in new profiles surprising because this profile growth did not match the website’s traffic, which wasn’t growing dramatically . . . this profile growth struck me as odd and it occurred to me that perhaps Jerk was using other means to generate profiles. I emailed Gheorghe David to inquire about the growth and ask him about its true source. . . . Mr. David’s response to my email did not describe the means by which Jerk.com profiles were generated, but he confirmed that jerk.com profiles came from Facebook.”)</p> <p><i>See</i> CCSMF 143</p> |
| 19. | Within six months of launching, Jerk.com grew to 85 million profiles. | <i>See</i> CCSMF 32 |
| 20. | In mid-2010, after failing to secure financing for Jerk, John Fanning tried to rebrand Jerk.com as Reper.com. | CX0229-001 (April 2010 email from Fanning: { |

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| | | <p style="text-align: center;">}</p> <p>CX0309-001 (May 2010 email from Fanning: “Jerk and reper are one company, which at the moment is named jerk.com LLC.”)</p> <p>CX0663 (June 2010 email from Fanning: “We have grown to almost 90 million profiles. We have build [sic] a second brand in the reputation space, less edgy more corporate www.reper.com. (I can show you, it’s a big leap over current jerk.com implementation))”</p> <p>CX0432 (April 2010 email from former Jerk intern: “So John was thinking that it might be a good idea to introduce the brand ‘reper.com’ ... alongside the Jerk.com brand as kind of a more professional backend to help secure more investors.”)</p> <p>CX0394 (July 2010 email from Fanning: “We built the reper.com brand to use for corporate partners who thought the jerk.com brand was a little too edgy for their tastes. We may even rename the company Reper and keep the jerk.com brand as a product owned by that company.”)</p> <p>CX0309 (May 2010 email from Fanning: “Jerk and reper are one company, which at the moment is named jerk.com LLC. We could change it to reper Inc or something like that at some point as that seems more corporate.”)</p> <p>CX0731-002 (April 2010 email from Fanning: “We are still working with jerk.com, but I am trying to negotiate a better deal and because we have not made much progress lately on financing we might have to switch the brand. I have reper.com which I want to launch, we could use both brands, settle on one, and we could switch the company name to reper which might make it easier to finance.”)</p> <p>CX0732 (June 2010 email from Fanning:</p> |
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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> |
| 21. | <p>In 2013, Jerk and Internet Domains had a payment dispute and Internet Domains purportedly locked Respondents out of the Jerk.com domain.</p> | <p>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.”)</p> <p>CX0527-001 (May 2013 letter from Jerk’s attorney to Louis Lardas: “Today, I learned that you have redirected the domain name jerk.com to content that you have apparently created. . . . Jerk, LLC demands that you take immediate steps to provide and restore full access and control as required under the agreement or it will file a lawsuit against you”)</p> |
| 22. | <p>In May 2013, profiles and other content found on Jerk.com were displayed on the website Jerk.org.</p> | <p>CX0258 ¶ 17 (Declaration of Kelly Ortiz: “On or about May 23, 2013, pages that I had previously seen on jerk.com were visible on the website jerk.org.”)</p> |
| 23. | <p>As of March 2014, Reper.com was still operational.</p> | <p>CX0665 (March 26, 2014 email from Fanning: “Can you look at the reper site and give the dev team some direction? Also there might be a deal in the works that would be good for reper and another deal that could get your stock public soon.”)</p> |
| 24. | <p>As of September 22, 2014, the Jerk.com and Jerk.org websites did not contain</p> | <p>CX0258 ¶ 18 (Declaration of Kelly Ortiz)</p> |

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| | individual profiles. | |
| | <u>Jerk.com Profiles</u> | |
| 25. | Jerk.com profiles contained a profile subject's first and last name. | <i>Jerk's Answer ¶ 6</i> <i>Fanning's Answer ¶ 6</i> |
| 26. | 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." | <i>Jerk's Answer ¶ 6</i> <i>Fanning's Answer ¶ 6</i> |
| 27. | The profiles contained fields where any user could enter the profile 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. | <i>Jerk's Answer ¶ 6</i> <i>Fanning's Answer ¶ 6</i> |
| 28. | Jerk.com profiles contained a comment field for users to write comments about the profile subject. | <i>Jerk's Answer ¶ 6</i> <i>Fanning's Answer ¶ 6</i> |
| 29. | Profiled subjects were identified as a "Jerk" or "not a Jerk" in red or green letter below the profile subjects' name. | CX0259 (Jerk.com profiles) CX0302 ¶ 8 ("the default setting for any profile on the site was a 'jerk score' of zero.") |
| 30. | Some profiles included comments such as "Omg I hate this kid he's such a loser," "Address: gay boulevard," and "just can go fucking slaughter herself . . . Nobody in their right mind would love you . . . not even your parents love [you]." | <i>Jerk's Answer ¶ 6</i> <i>Fanning's Answer ¶ 6</i> |
| 31. | Jerk.com displayed profiles of people of | CX0259 (profiles with photos featuring people of all ages); CX0027-001 ¶¶ 2-3 (12 |

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| | <p>all ages, including children.</p> | <p>year-old boy); CX0040-001 ¶ 2 (15 year-old girl); CX0004-001 ¶ 6 (14 year-old girl); CX0032-001-002 ¶¶ 2, 4, 8 (13 year-old boy); CX0036-001 ¶ 3 (2 ½ year-old and 4 month-old)</p> |
| <p>32.</p> | <p>Jerk.com contained approximately 85 million profiles.</p> | <p>CX0153-002 (email from Fanning: “In the first 6 months of Jerk.com’s launch: Awesome viral user acquisition - Our data base has grown to over 85 million profiles.”)</p> <p>CX0151-012 (presentation regarding Jerk.com: “In less than six months, Jerk.com: Grew to over 85 million personal profiles”)</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>CX0352-001 (email exchange among Jerk staff: “What is the information that we have received from the 85 million profiles?”)</p> <p>CX0307-001-002 (email from Fanning: “I don’t think we have any duplicates in the database. I think you don’t understand how truly large 85 million is. If you tried to count to 85 million you could not do it in your lifetime.”)</p> <p>CX0307-003 (email exchange among Fanning and Jerk staff discussing “existing abundance of profile names”)</p> <p>CX0360-001 (email from Romanian programmer to Fanning discussing exporting Jerk.com profiles to an iPhone app: “As we underlined in a previous email, the populating of current profiles it’s a work in progress operation. There are 80 million profiles to add to the database. . . . Will take more days to populate face recognition database with all pictures.”)</p> |

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| | | <p>CX0063-002 ¶ 8 (Expert Report of Brian Rowe: “I estimate that, in November 2012, 77.5 million jerk.com profiles were on the internet.)</p> <p>CX0663 (email from Fanning: “We have grown to almost 90 million profiles”)</p> |
| 33. | An estimated 29 million Jerk.com profiles (or 37.4% of all profiles) contained a photo of a person. | CX0063-002 ¶ 9 (Expert Report of Brian Rowe: “I estimate that, in November 2012, 29.0 million jerk.com profiles, which was about 37.4% of all jerk.com profiles, contained a photo of a person.”) |
| 34. | An estimated 4.75 million Jerk.com profiles (or 6.1% of all profiles) contained a photo of a child who appeared to be under age 10. | CX0063-002 ¶ 10 (Expert Report of Brian Rowe: “I estimate that, in November 2012, 4.75 million jerk.com profiles, which was about 6.1% of all jerk.com profiles, contained a photo of a child under 10.”) |
| 35. | Some photos featured intimate family moments, including children undressed and a mother nursing her child. | CX0259-024-030 (Jerk.com profiles) |
| 36. | Often, Jerk.com profiles featured photographs of children, which were displayed on the site without the children’s or their parents’ knowledge or consent. Fanning deflected concerns about using photographs without permission on Jerk.com. | <p>CX0032-001 ¶ 4 (“I was furious that my son’s photo was on this site without my or my son’s permission.”)</p> <p>CX0036-001 ¶¶ 3-4 (“I found a profile with my name and a photo of me with my husband and two infant children. . . . I did not authorize anyone to post my information on Jerk.com and do not know how my Facebook photo appeared on this website.”)</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>CX0181-134:5-16 (Depo. “Q. Let’s talk</p> |

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| | | <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> |

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| | | <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> |
| <p>40.</p> | <p>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.</p> | <p>CX0047 (Declaration of Craig Kauffman, capturing portions of Jerk.com as they appeared in May 2012, including webpages CX0048-031 (“Post a Jerk”); CX0048-032 (“Remove Me!”); CX0048-035 (“Welcome to Jerk”); CX0048-078-79 (“About Us”)); CX0048 (Jerk.com profiles)</p> <p>CX0258 ¶ 16 (Declaration of Kelly Ortiz, capturing portions of Jerk.com as they appeared in February 2013, including webpages CX0272 (“Welcome to Jerk”); CX0273 (“About Us”); CX0274 (“Post a</p> |

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| | | <p>Jerk”); CX0275 (“Remove”); CX0259 (Jerk.com profiles)</p> <p>CX0301-001 (Jerk’s Petition to Quash, pg. 1: “Jerk, LLC operates the website Jerk.com which features user generated content about individuals.”)</p> |
| 41. | The Jerk.com homepage featured profiles with comments and votes. | CX0048-001-002 |
| 42. | Jerk.com has stated “Want to join the millions of people who already use Jerk for important updates for business, dating, and more?” | <p>CX0048-035 (“Welcome to Jerk”)</p> <p>CX0272 (“Welcome to Jerk”)</p> |
| 43. | <p>The “About Us” section on Jerk.com has stated:</p> <p>“About Us: jerk.com and Jerk LLC</p> <p>1. jerk.com Membership Terms & Conditions</p> <p>To use this service, you must be at least 14 years old. jerk.com is an online web application created to help keep consumers informed. . . .</p> <p>2. Online Conduct</p> <p>You agree that: You are solely responsible for the content or information you publish or display (hereinafter, “post”) on jerk.com. You will NOT post on jerk.com any defamatory, inaccurate, abusive, obscene, profane, offensive, threatening, harassing, racially offensive, or illegal material, or any material that infringes or violates another party’s rights (including, but not limited to, intellectual property rights, and rights of privacy and publicity). You will use jerk.com in a</p> | <p>CX0048-078-79 (“About Us”)</p> <p>CX0273 (“About Us”)</p> |

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| | <p>manner consistent with any and all applicable laws and regulations. By posting information on jerk.com, you warrant and represent that the information is truthful and accurate. You will not post, distribute or reproduce in any way any copyrighted material, trademarks, or other proprietary information without obtaining the prior written consent of the owner of such proprietary rights and except as otherwise permitted by law. . . .</p> <p>4. Online Content</p> <p>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, and should not necessarily be relied upon. Such authors are solely responsible for the accuracy of such content. Jerk LLC does not guarantee the accuracy, completeness, or usefulness of any information on jerk.com</p> <p>5. Removal of Information</p> <p>By posting information on jerk.com, you understand and agree that the material will not be removed even at your request. You shall remain solely responsible for the content of your postings on jerk.com. . . .</p> <p>7. Information Supplied by You</p> <p>. . . Whereas you are legally entitled to publish your comments anonymously, at the discretion of Jerk LLC, the personally identifying information of any user may lose any protections. . . .</p> | |
| <p>44.</p> | <p>The “Remove Me!” section on Jerk.com has stated, “Jerk is where you find out if someone is a jerk, is not a jerk, or is a</p> | <p>CX0048-032 (“Remove Me!”) CX0275 (“Remove”)</p> |

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| | 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.” | <p><i>Jerk’s Answer ¶ 4</i></p> <p><i>Fanning’s Answer ¶ 4</i></p> <p>CX0048-031 (“Post a Jerk”)</p> <p>CX0274 (“Post a Jerk”)</p> |
| 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 |
| 47. | Respondents intended to convey the message to consumers that Jerk.com was an organic social network created by Jerk.com users, and that it reflected those users’ views of the people profiled on Jerk.com. | <p>CX0306-002 (email from web designer to Fanning and Jerk staff: “We should have a slogan . . . so users understand what the site is about. John-John’s favorite for Jerk.com was ‘Jerk.com: Backstab your Best Friend.’ Any thoughts?”)</p> <p>CX0202 (email from investor to Fanning: {</p> <p style="text-align: right;">}</p> <p>CX0357 (email from Fanning: “Am I a jerk is different than Are you a jerk. If it says Am I a jerk, you would expect to click the link and see people writing stories where they ask users to decide. If it says Are you a jerk? That’s a pretty direct question that you expect that someone if going to tell you the answer to if you click the link, which is what that’s supposed to be about.”)</p> |

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| <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> |

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| | | <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> |
| <p>50.</p> | <p>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> |
| <p>51.</p> | <p>After viewing Jerk.com, consumers believed that someone they knew created their Jerk.com profile and that it reflected that person’s opinion of them.</p> | <p>CX0036-001 ¶ 3 (“Initially, I was worried that someone had created the Jerk.com profile against me. I was mortified and embarrassed that my name and the photo of me with my children were on this website.”)</p> <p>CX0037-001 ¶ 3 (“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 me on there. The website bragged about success stories of posting and rating ‘jerks,’ and these stories were like ads encouraging people to post and rate more people. I was</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> <p>CX0539 (“I request that you immediately notify the infringer of this notice and inform them of their duty to remove the infringing material immediately, and notify them to cease any further posting of infringing material to your server in the future”)</p> <p>CX0542 (“someone has put my name on ‘jerk.com’”)</p> <p>CX0541-003 (“It has come to my attention that my name has been submitted to your client’s website Jerk.com and I’d like the profile removed. The site is crass, indecent and has the capability of ruining lives and causing great embarrassment. I am in fact not a jerk, I volunteer on a hospice unit, sit on the board of several charities and am well liked by my peers and colleagues. I’m not sure who</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> |

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| | | <p>me there. . . . I spent at least 30 or more hours researching how to request takedowns.”)</p> |
| <p>54.</p> | <p>Jerk staff discussed the fact that consumers value user-generated social networks more than auto-generated websites.</p> | <p>CX0344-001 (email among Jerk staff and Fanning: “LinkedIn has 70 million members who use the site to get information about and connect with people. Their valuation is now \$2 billion. Jerk.com has 85 million profiles and growing. Reper.com will have that and more. Now, we need to keep them coming back to our sites and we will enhance the lives of those we serve and change the lives of ourselves and our families in ways that exceed our wildest dreams.” Fanning reply: “We need to grow our traffic. Linked [sic] is valued on traffic.”)</p> <p>CX0057-002 ¶ 5 (former intern at Jerk: “I believed that the website would only have value to users if people manually created the Jerk.com profiles. People would be more likely to use the website if they believed their peers were using it.”)</p> |
| <p>55.</p> | <p>Respondents wanted to increase traffic to the website because that would help raise the value of Jerk.</p> | <p>CX0629-002-3 ¶ 9 (“To my understanding, the organic growth of Jerk.com profiles would increase traffic to the website, which would help raise the value of Jerk, LLC.”)</p> <p>CX0317-001 (“All the value is in numbers”)</p> <p>CX0302-002 ¶ 7 (“Having a defined concept of how to monetize the website was important to potential investors. One concept was that a website becomes more valuable by the number of its users and the level of the users engagement with the website.”)</p> |

| | Respondents Created Jerk.com Profiles | |
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| 56. | In the vast majority of instances, content on Jerk.com was not created by Jerk.com users and did not reflect those users' views of the profiled individual. | <i>See CCSMF 57 to 70</i> |
| 57. | The vast majority of Jerk.com profiles were created by automated means, which included bulk loading information from Facebook. | <p>CX0057 ¶ 8 (former intern at Jerk: “During my time at Jerk.com, the website was not popular and had little user-generated content. Most of the profiles were bulk loaded from Facebook.”)</p> <p>CX0057-002 ¶ 5 (former intern at Jerk: “A third idea, championed by software engineers from a Romanian firm called Software Assist, was that we generate profiles on Jerk.com by bulk-loading user information from Facebook. They suggested that we access Facebook’s application programming interface (‘API’) and export user data to Jerk.”)</p> <p>CX0438-30:3-20 (Depo. Q: So how did Jerk.com populate its profiles? A: While I worked on it most of the profiles were kind of scraped, I guess would be a term, from Facebook – from what was publicly available at that point. Q: What does ‘scraping’ mean? A: So Facebook exposes an API, which is an application programming interface, which allows third-party developers to use the information on Facebook when developing their own applications and websites. A part of that is the ability to access any information that Facebook users have made public on Facebook, and to use that when populating content for your own services. Q: And did Jerk.com use this scraping procedure to populate its profiles? A: Yeah, a large number of the profiles at that time were generated via that mechanism.”)</p> |

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| | <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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| | | <p>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 methods the company was using to create shell profiles? A: I don't.")</p> <p>CX0181-216:20-217:13 (Depo. "Q: Did you have any conversation with anyone about where most of the profiles on jerk.com came from? A: I knew that a large number came through the automated method or whatever of traversing Facebook but I don't know what percentage or -. Q: How do you know it was a large number? A: Because I knew that it was a key piece of how the numbers grew quickly. Q: From what source did you know that information? A: From John. Q: He told that to you? A: Yes. Q: And by large number, did John mean hundreds, thousands, millions, do you have any understanding? . . . A: Well, I knew there were live numbers, as I said before, I thought it - remember millions being mentioned, but I don't remember 85 million.")</p> <p>CX0307-002 (email from Fanning: "My understanding is that each profile has a unique facebook id associated with it.")</p> |
| <p>58.</p> | <p>Some Jerk.com profiles were created when consumers entered their Facebook login credentials on Jerk.com to search for people they knew on Jerk.com; doing that caused a program to automatically generate Jerk.com profiles based upon the consumers' contact information and Facebook friends lists.</p> | <p>CX0629-003 ¶ 10 ("Jerk.com included a feature called 'Find People I know.' That feature functioned by inviting website visitors to sign into Jerk.com either through their Facebook account, or through their email service provider. To my understanding, when website visitors signed into Jerk.com through Facebook, Jerk.com gained access to the visitors' Facebook friends lists and generated profiles on Jerk.com for all of them.")</p> <p>CX0724-001 (email from Romanian programmers copying John Fanning: "When you ask the user to login into their FaceBook</p> |

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| | | <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> |

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| | | <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 loyalty. | <p>CX0443-001 (analytics report for Jerk.com: “There are low levels of participant loyalty associated with Jerk.com.”); <i>see also</i> CX0157-002 (same)</p> <p>CX0443-004 (analytics report for Jerk.com: “Customer loyalty levels are clearly very low . . . only 2.94% of visitors frequented the site more than 5 times.”); <i>see also</i> CX0157-005</p> |

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| | | <p>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.”); <i>see also</i> CX0157-005 (same)</p> <p>CX0441-001 (email from Fanning: “I think you are right, but I think its more than the domain name that’s driving the growth, which is surprising given the truth of the fact that there is little reason for people to stay once they get there.”)</p> |
| <p>63.</p> | <p>The vast majority of users visited Jerk.com only once.</p> | <p>CX0443-001 (analytics report for Jerk.com: “The vast majority of users only ever visit the site once.”); <i>see also</i> CX0157-002</p> <p>CX0443-004 (analytics report for Jerk.com: “Almost 90% of people who visited Jerk.com in the past month decided to never frequent the website again.”); <i>see also</i> CX0157-005 (same)</p> <p>CX0443-004 (analytics reporting on Jerk.com: “Since 2009, more than 88% of visitations were one-off occurrences.”); <i>see also</i> CX0157-005 (same)</p> |
| <p>64.</p> | <p>Users consistently spent less than a minute on Jerk.com.</p> | <p>CX0443-001 (analytics report for Jerk.com: “people have consistently spent less than a minute on the Jerk.com website. It is not engaging them sufficiently enough to interact with the site for long periods of time.”); <i>see also</i> CX0157-002 (same)</p> <p>CX0443-002 (analytics report for Jerk.com: “In the past 12 months, the mean average time spent on the Jerk.com website is 00:01:07.”) <i>see also</i> CX0157-003 (same)</p> <p>CX0441-002 (email from Jerk’s marketing consultant: “people are still not spending any significant amounts of time on the website</p> |

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| | | 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; |

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| | | 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. | Facebook permits third-party Facebook Developers to access information on Facebook, provided that the Developers comply with Facebook’s terms. | CX0094-002 ¶ 7 (Facebook Declaration: “In addition to people who use its service, Facebook also makes content posted on its service available (subject to limitations set by the content owners) to third-party application developers called ‘Facebook Developers,’ provided that the developers agree to and comply with Facebook’s user and developer agreements.”) CX0097-005 (Facebook 2010 Developer Principles & Policies: “Changes . . . We can |

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| | | <p>change these Developer Principles and Policies at any time without prior notice as we deem necessary. Your continued use of Platform constitutes acceptance of those changes.”)</p> <p>CX0094-002 ¶ 8 (Facebook Declaration: “Facebook permits Facebook Developers to access and interact with the content hosted on its site, subject to and restricted by Facebook’s Developer Terms of Service and Statement of Rights and Responsibilities (collectively ‘Terms’).”)</p> |
| <p>73.</p> | <p>In 2008, Jerk’s agent registered as a Facebook Developer.</p> | <p>CX0094-004 ¶15 (Facebook Declaration: “In 2008, Adrian Savu registered as a user and also registered as a Developer with Facebook.”)</p> <p>CX0104 (Facebook registration records for Adrian Savu)</p> <p>CX0094-004 ¶16 (Facebook Declaration: “By February 2010, Savu had registered multiple applications on the Facebook Platform, including those named Jerk.com, Jerk2.com, Jerk3.com, Jerk4.com, Jerk.be, and jerk.be.”)</p> <p>CX0220-002 { }</p> <p>CX0428 { }</p> <p>CX0094-004 ¶16 (Facebook Declaration: “The IP addresses associated with Savu’s use of the Facebook Platform indicate that he was located in Romania.”)</p> |
| <p>74.</p> | <p>By having its agent register as a Facebook Developer, Jerk gained access to Facebook’s application programming interface (API), which allowed it to retrieve Facebook user’s publicly</p> | <p>See CCSMF 73 (Jerk’s agent registered as a Facebook Developer)</p> <p>CX0094-002-003 ¶ 8 (Facebook Declaration: “The Facebook Platform enables such access</p> |

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| | <p>available and non-public data.</p> | <p>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 provided by users who have chosen to access or connect to the Developer’s application and approved such access.”)</p> |
| <p>75.</p> | <p>Facebook has operated a publicly accessible website called The Facebook Public Directory that lists names and profile photos of Facebook users.</p> | <p>CX0094-004 ¶ 13 (Facebook Declaration: “Facebook has operated a publicly accessible website called the Facebook Public Directory, which lists the names of all Facebook users (whose privacy settings permit public search listings) and displays their profile photos.”)</p> |
| <p>76.</p> | <p>Developers who use the Facebook Public Directory are subject to Facebook’s terms, including the prohibitions against automated data collection.</p> | <p>CX0094-004 ¶ 14 (“Use of the Facebook Public Directory by Facebook Developers is subject to Facebook Terms, including the prohibitions against automated data collection and use stated above.”)</p> |
| <p>77.</p> | <p>Jerk failed to obtain users’ explicit consent to collect certain Facebook data, including photos, in violation of Facebook’s policies. Users complained to Facebook about Jerk.com posting their data from Facebook.</p> | <p>CX0097-003 (Facebook’s April 2010 Developer Principles & Policies: “Users give you their basic account information when they connect with your application. For all other data, you must obtain explicit consent from the user who provided the data to us before using it for any purpose other than displaying it back to the user.”)</p> <p>CX0094-005 ¶¶ 17-18 (Facebook Declaration: “According to Facebook’s records, very few Facebook users accessed or connected to these Jerk applications . . . the number of users who accessed or connected to each of the other Jerk applications [jerk.com, jerk2.com,</p> |

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| | | <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> |

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| | | <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> |

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| | <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> <p>CX0007-001 ¶ 4 (“I tried to remove my profile by clicking on a page that said I could remove my name from the website if I paid jerk.com \$25.00. I did not want to pay this money, so instead I wrote jerk.com a letter. I sent the letter via certified mail to DMCA Complaints, Jerk, LLC . . . which was the address I found on their website. . . . The letter was returned to me ‘undeliverable’ because the address was ‘unknown’ and no forwarding address was available.”)</p> <p>CX0028-001 ¶ 6 (“Jerk.com also required you to pay to have your profile removed. I paid the amount required to contact the company’s customer support, but never received an email response.”)</p> <p>CX0027-001 ¶ 6-7 (“I never got a chance to complain to anyone at jerk.com because there was no way to contact the company. . . . In February 2012, I filed a complaint with the Better Business Bureau in Delaware on behalf of my brother. The BBB told us that they contacted the company about our complaint, but no one from jerk.com ever got back in touch with them. No one from Jerk ever contacted me.”)</p> <p>CX0738-01 (February 2012 email from Fanning to Jerk’s registered agent: “Just ignore them . . . These are customers trying to get service from us without paying the service</p> |
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| | | <p>charge.”)</p> <p>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 request.”); see also CX0097-003 (2010 Facebook Developer Principles & Policies</p> |
| <p>80.</p> | <p>Jerk failed to delete photos it obtained from Facebook upon user requests to delete the data, in violation of Facebook policy.</p> | <p>CX0097-003 (2010 Facebook Developer Principles & Policies: “You will delete all data you receive from us concerning a user if the user asks you to do so”)</p> <p>CX0528-001 (letter from Jerk’s counsel to Attorney General of Missouri: “[The complaint] does not state the age of the complainant’s son In the event that the subject of the posting is not 13 years or younger, it is not the policy of Jerk, LLC to remove profiles due to complaints about the profile.”)</p> <p>CX0006-001 ¶ 6 (Jerk failed to delete data obtained from Facebook upon a consumer’s request); CX0011-001-003 ¶ 5-15 (same); CX0027-001-002 ¶ 7-8 (same); CX0037-001 ¶ 5 (same)</p> <p>CX0043-001-002 ¶¶ 3, 5-6 (Jerk ignored a request from a sheriff’s deputy to remove a Jerk.com profile that was endangering a 13-year old girl)</p> <p>CX0534 (Jerk refused to remove a profile of a child who was a victim of abuse.)</p> |
| <p>81.</p> | <p>Jerk maintained information obtained through Facebook after Jerk’s Facebook access was disabled, in violation of Facebook policy.</p> | <p>CX0094-005 ¶ 19 (Facebook Declaration: “All of the aforementioned Jerk applications were ultimately disabled from the Facebook Platform. I am informed and understand that Facebook disabled several Jerk-related</p> |

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| | | <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> |
| <p>82.</p> | <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> |
| <p>83.</p> | <p>A Jerk team member expressed concerns to John Fanning that Jerk was violating Facebook’s policies.</p> | <p>CX0629-004 ¶ 12 (“In September 2009, I expressed my concerns to Mr. Fanning about the way Jerk.com was using information from Facebook to create profiles on Jerk.com. Specifically, 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>CX0653 (email to Fanning: “I did the research for you, just read it. Below is Facebook’s TOU on facebook connect (the thing we use). I doubt the Romanians could have built something that ‘stole’ data from Facebook. However, under the ‘storable data’ link in #1, I didn’t see anything that says Fname Lname [first name; last name] is storable . . . Also, #3 [data protected by intellectual property rights]</p> |

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| | | <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> | |
| 84. | <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>See CCSMF 85 to 89</p> |
| 85. | <p>Respondents disseminated or caused to be disseminated statements to consumers on Jerk.com about Jerk.com memberships (“paid premium features”).</p> | <p>CX0047 (Declaration of Craig Kauffman, capturing portions of Jerk.com as they appeared in May 2012, including the webpages CX0048-032 (“Remove Me!”) and CX0048-035)</p> <p>CX0258 ¶ 16 (Declaration of Kelly Ortiz, capturing portions of Jerk.com as they appeared in February 2013, including webpages CX0275 (“Remove”); CX0276 (“Become A Subscriber”))</p> |
| 86. | <p>The Jerk.com website has stated: “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</p> | <p>CX0048-032 (“Remove Me!”)</p> <p>CX0275 (“Remove”)</p> |

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| | 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 |

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| | | <p>that businesses could subscribe to Yelp and pay fees, for instance, to have negative reviews removed from their Yelp pages, or at least buried deeper down.”)</p> <p>CX0112-002 (email from Fanning: “Before this [negative] feedback is posted to the record however, the email address registered for that profile will receive an email displaying the feedback, providing the jerk the opportunity to dispute the feedback if they are a paying subscriber to jerk.com by simply clicking the dispute button. . . . you can dispute any negative info posted there by clicking the dispute option on the records after you log in so long as you are a current paying member of the jerk.com dispute resolution membership service.”)</p> <p>CX0112-002 (email from Fanning: “Once a dispute is created with respect to an item it will not be published until both parties agree on the content of the posting so long as you continue to maintain your active access to the dispute resolution membership service.”); <i>see also</i> CX0205-002</p> <p>CX0080 (chat between Fanning and business partner: “the only negative of the jerk.com business plan is the blackmail-feeling revenue model”)</p> |
| <p>91.</p> | <p>Consumers believed that purchasing a Jerk.com membership would enable them to alter or remove their Jerk.com profiles.</p> | <p>CX0038 ¶ 4 (“I read a statement on jerk.com that indicated I could remove information from my profile by joining jerk.com.”)</p> <p>CX0005 ¶ 5 (“The website said that if you became a member of jerk.com for about \$2 to \$5 a month, you could make changes to your profile.”)</p> <p>CX0040 ¶ 6 (“I was desperate to remove my daughter from the website, and I paid the</p> |

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| | | <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> | |
| 92. | <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. | <p>Consumers subscribed to Jerk.com by paying \$30 for a membership.</p> | <p><i>Jerk’s Answer</i> ¶ 12</p> <p>CX0001 ¶ 2 (“I registered with the website and paid \$30 for a standard membership.”)</p> <p>CX0040 ¶ 6 (“I was desperate to remove my daughter from the website, and I paid the \$30.00 charge three times in an attempt to delete the profile, for a total of \$90.00”)</p> <p>CX0038 ¶ 4 (“Although I did not want to support jerk.com and the website’s extortionate practices, I was concerned about my business reputation so I paid jerk.com \$30 for an annual membership.”)</p> |
| 94. | <p>Consumers did not receive any benefits in exchange for purchasing a Jerk.com membership.</p> | <p>CX0005 ¶ 6 (“After I paid, there were no new features available to me to remove my profile. The benefit they promised – the ability to remove or change your profile – was nowhere to be found.”)</p> |

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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> |

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| | <u>John Fanning's Control and Participation</u> | |
| | John Fanning founded Jerk | |
| 97. | John Fanning was the founder of Jerk. | <p>CX0210-001 {</p> <p style="text-align: center;">}</p> <p>CX0133-002 (email from Jerk investor to venture capitalist: "The company is started by John Fanning, Napster co-founder copied on this email")</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>CX0368-007 (investor presentation: "The Team . . . John Fanning, Founder - Financing, Vision & Recruiting")</p> <p>CX0181-52:11-18 (Depo. Q. "Do you know who founded the company [Jerk, LLC]? A. I believe so. Q. Who was it? A. I believe it's John Fanning.")</p> |
| 98. | In January 2009, John Fanning hired a registered agent to incorporate Jerk. | CX0041-002 ¶ 4 ("In January 2009, Mr. Fanning hired HBS to incorporate and serve as the registered agent for a company called Jerk LLC.") |
| 99. | In January 2009, John Fanning signed a <i>Certification of Revival of a Delaware Limited Liability Company</i> for Jerk. | CX0737-005 ("I, John Fanning, Authorized Person of the above named Limited Liability Company [Jerk, LLC] do hereby certify that this limited liability company is paying all annual taxes, penalties and interest due to the State of Delaware.") |

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| <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> |
| <p>104.</p> | <p>John Fanning distributed shares of Jerk to an investor.</p> | <p>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.”)</p> <p>CX0119-001 (email from Fanning: “I will send you a certificate for 10% ownership on a fully diluted basis. I have a form for the LLC agreement which we will use which I will forward as well. Our intention is to convert to a C Corp at some point early on, possibly during series A. At that point we will all have founders share, and the Series A investors will get preferreds.”)</p> |
| <p>105.</p> | <p>{Fanning set aside Jerk stock for Jerk employees.}</p> | <p>CX0466-008 (email from Fanning: { }</p> |
| | <p>John Fanning’s company, NetCapital.com, LLC (“NetCapital”),</p> | |

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| | <p>was a majority shareholder in Jerk and commingled funds with Jerk</p> | |
| <p>106.</p> | <p>John Fanning is a founder, manager, and officer of NetCapital, and has held himself out as having a controlling influence over the company.</p> | <p>CX0375-002 (“John W. Fanning, Chairman NetCapital”)</p> <p>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”)</p> <p>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 controlling influence? A. Just from the tenor of our conversations and the substance of those conversations. Q. Can you be a little more specific? A. Well, I was coaching him around NetCapital and he seems to be the driver behind it. So that was my impression.”)</p> <p>CX0046-018, 022 (presentation on NetCapital’s website listed John Fanning as a Partner and CTO of NetCapital)</p> |
| <p>107.</p> | <p>Jerk.com was one of NetCapital’s portfolio companies.</p> | <p>CX0073-20 (“NetCapital: Current Portfolio Companies . . . Jerk.com”); <i>see also</i> CX0046-027 (same)</p> <p>CX0057-001 ¶ 3 (former intern at Jerk: “Mr. Fanning’s venture capital company, Netcapital, oversaw several internet start-up companies, including Jerk.com.”)</p> <p>CX0629-001 ¶ 5 (“Since I worked on a few NetCapital Projects, I assumed Mr. Fanning’s company, NetCapital, to be Jerk LLC’s parent</p> |

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| | | 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 { } |

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| 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, <u>www.jerk.com</u> 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 { |

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| | | <p style="text-align: right;">}</p> <p>CX0239-001 (email from Fanning to investor: { <p style="text-align: right;">}</p> </p> |
| 118. | { } | <p><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.")</p> <p>CX0056-002 { <p style="text-align: right;">}</p> </p> |
| 119. | John Fanning's { } | <p>CX0412 { <p style="text-align: right;">}</p> <p>CX0092: 5:18-19 { <p style="text-align: right;">}</p> </p></p> |
| 120. | John Fanning received consumer complaints about Jerk.com. | <p>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</p> <p>CX0401-004 ¶ 11 ("Immedion received various consumer complaints about the website, www.jerk.com, during the time frame when Immedion was providing services to Jerk, LLC. When these complaints came in to Immedion, Immedion forwarded the complaints to John Fanning . . . To the best of my knowledge, Mr.. Fanning was responsible to respond to these complaints on behalf of the website, www.jerk.com.")</p> |

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| 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 { } |

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| 127. | { } | CX0418-002-4 (2012 Jerk bank statements) |
| 128. | John Fanning handled the finances and budgeting for Jerk.com. | <p>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!")</p> <p>CX0308-001 (email from Fanning: "I took the amount of money we have available, budgeted the money to last until the end of august")</p> <p>CX0167-001 (email from Fanning: "Here is what I would like to do on <u>Jerk.com</u>. 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 had advantages of already having access, and they built the system, so it only cost \$100.00.")</p> <p>CX0076 (email from Fanning with subject "Burn rate for jerk.com": "the monthly expenses at this point are around 10k")</p> <p>CX0418 {</p> <p style="text-align: right;">}; see</p> <p>also CX0411 {</p> <p style="text-align: right;">}</p> |

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| | <p>John Fanning recruited investors and attempted to find capital for Jerk.com</p> | |
| <p>129.</p> | <p>John Fanning solicited investors for capital to fund Jerk.com.</p> | <p>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”)</p> <p>CX0367-001 (email from Jerk team member to Fanning: {</p> <p style="text-align: center;">}</p> <p>CX0141-001 (email from Fanning: “Still struggling along with jerk.com. No really [sic] money to speak of yet, but I am still trying.”)</p> <p>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.”)</p> <p>CX0438-41:22-42:2 (Depo. “Q: And how was Jerk.com presented at these meetings? How did John Fanning describe Jerk? A: He described it – that’s a good question. I’m trying to remember. He described it, I believe as a startup that he was working on that he was still looking for some kind of angel investing for it.”)</p> <p>CX0140-001 (email from Fanning to a potential investor: “Do you have any proposal for how we might work together on jerk.com?”)</p> |

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| | | <p>CX0146-001 (email from Fanning: “I have a few VCs interested in funding jerk.com/reper.com.”)</p> <p>CX0057-002 ¶ 7 (former intern at Jerk: “In December 2009, John Fanning and I flew from Boston to San Francisco to discuss Jerk.com with several venture capital firms.”)</p> <p>CX0077 (November 2008 email from Fanning: “I have a VC meeting on monday [sic] with another VC for jerk.com”)</p> <p>CX0147-001 (email from Fanning: “there is a chance we can close a VC round for Jerk. We have 3 VCs two top tier interested.”)</p> <p>CX0092: 213:2-214:7 ({ }</p> |
| <p>130.</p> | <p>John Fanning attempted to partner with another website to generate revenue for Jerk.com</p> | <p>CX0513-001 (email among Intelius staff: }</p> <p>CX0361 (photo of Fanning on “funding call”); see <i>also</i> CX0438-79:2-3 (Depo. In this photo, “John Fanning is leaning against the threshold in the doorway.”)</p> |
| <p>131.</p> | <p>John Fanning sent investors an executive summary for Jerk.com.</p> | <p>CX0082-001 (email from Fanning: “Here is the current executive summary for Jerk.com. . . . [] suggested we update it, I think so we can begin to circulate material on the company. Let me know if you have any good ideas for making it better or would like to edit.”)</p> <p>CX0206 (company summary)</p> |

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| | | <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> |

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| | 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. | 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”) 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.”) CX0629-001 ¶ 8 (“I participated in brainstorming discussions on the website’s strategy with John Fanning and other people |

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| | | <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> |

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| | | <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 like that. She was a potential investor, but was also a potential member of the team.”)</p> <p>CX0734 {</p> <p style="text-align: center;">}</p> <p>CX0466 {</p> <p style="text-align: right;">}</p> <p>CX0464-001 ¶ 1-2 {</p> <p style="text-align: center;">}</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> |

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| | | <p>marketing and public relations plans for Jerk.com)</p> <p>CX0087-002-003 (Fanning considered hiring a chief marketing officer for Jerk.com)</p> |
| | <p>John Fanning exercised control over the web hosting and design of Jerk.com</p> | |
| <p>141.</p> | <p>John Fanning set up Jerk.com through his web hosting service.</p> | <p>CX0081-001, 003 (January 2009 chat between Fanning and a business partner: “John: how should I set up the dns for jerk.com . . . how do i [sic] tell bulk that jerk.com is dns hosted for my account . . . and wrote jerk.com . . . and entered the order . . . I did that . . . I think jerk.com is going to be a big success.”)</p> |
| <p>142.</p> | <p>John Fanning hired and worked with a data hosting company to host Jerk.com’s servers.</p> | <p>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”)</p> <p>CX0402-001–023 (service order forms signed or initialed by Fanning); <i>see also</i> CX0401-005 ¶ 15.a-d (listing service order forms)</p> <p>CX0403-002 {</p> <p style="text-align: center;">}</p> <p>CX0468-001 (email from data host to Fanning: {</p> <p style="text-align: center;">}</p> |
| <p>143.</p> | <p>John Fanning hired Software Assist, a software development company in Romania, and developers in India to program and design Jerk.com.</p> | <p>CX0629-002 ¶ 7 (“John Fanning also had a Romanian website development company named Software Assist working on the Jerk website. My contact at Software Assist was a person named Gheorghe David, whom I was</p> |

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| | <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: Okay. Development team in Romania, were those employees or contractors of John Fanning’s? A: I am assuming they were contractors, but I don’t know. Q: Did John tell you what they were doing? A: They were doing the development on the site.”)</p> <p>CX0438-024:16-24 (Depo. “Q. Who were the -- who was working on the site in Romania? A. I believe the name of the company was Software Assist. They were contractors that were hired to work on the site. Q. And do you remember what kind of work they did for the site? A. They essentially built the site as it existed at that time.”)</p> <p>CX0711-003 (email from Romanian developer to programmer, copying Fanning: “I had a very clear conversation with John last Wednesday. All the code is available on jerk.com machine . . . I sent to John a very</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> |

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| | | 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. | CX0155-001 (email from Fanning announcing, “new design for jerk.com . . . we are not going to change it much before its [sic] live.”) CX0130-001 (email from Fanning: “Put it up on jerk.com”) |

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| | <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> |

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| | | <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.”).</p> <p>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 he believed that it was legal. Q. But was John the one who informed you that Jerk was getting profiles by traversing Facebook for that information? A. Yes.”)</p> |
| <p>153.</p> | <p>At least one Jerk team member expressed concern to John Fanning that Jerk’s practices violated Facebook’s policies.</p> | <p>CX0629-004 CX0653-001</p> |
| <p>154.</p> | <p>Fanning wanted millions of Jerk.com profiles because more profiles would drive more traffic to the website and increase Jerk’s potential value.</p> | <p>CX0317-001 (email from Fanning: “All the value is in numbers, but I never said the 85M number, I said the traffic numbers, and even further the growth in traffic. You seem to harp on the evil 85M so I will explain why 85M profiles that seem empty create traffic.</p> |

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| | | 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. | <p>CX0401-004 ¶ 11 (Fanning was the point of contact at Jerk for Jerk.com’s data host)</p> <p>CX0403-007 (email from Fanning: {</p> |

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| | | <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> |
| | <u>Consumer Injury</u> | |
| | Respondents’ creation of Jerk.com profiles harmed consumers | |
| 158. | Consumers paid money to Respondents in an effort to have their Jerk.com profile removed. | <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> |

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| | | 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> |

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| <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 with a stalker and do not want him googling my name and getting a pic of her”)</p> <p>CX0596-001 (photo featuring a teenager: “Jerk.com has made a profile for me on their website . . . I feel unsafe and victimized by this website.”)</p> <p>CX0595-001 (“I googled my name and found me listed on this site. Not only did I find my profile and my picture, I had no idea that this site even had these pieces of information. . . . I am very concerned for my safety and the well-being of my family especially being that of an active duty military member. This website had no consent for this information and should be shut down for violations of privacy.”)</p> <p>CX0535-001 (“I was hoping you could help me get a threat to me and my property removed from Jerk.com”)</p> <p>CX0598-001 (“The reason I need my page removed is because my father who is in jail is coming out and I worry about my safety”)</p> <p>CX0538 (email from consumer to Jerk: “my</p> |

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| | | <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> |

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| | | had not consented to.”) |
| 167. | Consumers avoided the Internet after discovering their profiles on Jerk.com. | CX0031-002 ¶ 8 (“As a result of the Jerk.com website, I am turned off from the Internet and use it a lot less now.”) |
| | <u>Jerk’s Defenses</u> | |
| | Jerk.com’s Commercial Purpose | |
| 168. | John Fanning presented Jerk.com as a commercial enterprise. | CX0112-002 (email from Fanning: “From a business perspective the powerful positive attributes are . . . Compelling reason to buy . . . Self-funding prior to tipping point . . . Market potential is every person on earth.”) CX0119-001: (email from Fanning: { } |
| 169. | NetCapital’s website described Jerk.com as a lucrative business opportunity for investors. | CX0046-047-050 (“From a business perspective Jerk.com offers a powerful positive potential for a high impact and profitable business model”); CX0045 ¶ 2 (document downloaded from NetCapital’s website) |
| 170. | John Fanning prepared a presentation to a venture capitalist that included a section titled “Compelling Investment Thesis,” stating that one advantage of investing in Jerk.com was “Large market potential (nearly every person on earth).” | CX0117-004-005 (“Revenue Model”) |
| 171. | { | CX0421-005 { |

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| 172. | Jerk had a business plan that revolved around making money. | <p>CX0631-010 (Jerk.com presentation: “Timeline * January 1, 2010 – Jerk.com sells for 100 billion dollars”); <i>see also</i> CX0629-001 ¶ 4 (CX0631 is a “PowerPoint presentation that I contributed to describe Jerk.com to potential investors based on my discussions with John Fanning and others on the team.”)</p> <p>CX0631-004 (Jerk.com presentation: “Business Model · Subscription Services · Dispute Resolution · Advertisements”)</p> <p>CX0181-148:25-149:2 (Depo. “Q: So would it be accurate to say that the business model revolved around making money? A: Well, yeah, that’s what a business model is.”)</p> <p>CX0302 ¶ 7 (“there were ongoing discussions regarding how best to monetize the website. Having a defined concept of how to monetize the website was important to potential investors.”)</p> |
| 173. | Investors invested money in Jerk as a business investment and hoped to make a profit off the investment. | <p>CX0181-150:3-8 (Depo. “Q: And you had mentioned investing money in Jerk and from your perspective was this a business investment? A: Yes. Q: And you had hoped to make a profit off it; is that right? A: Yes.”)</p> <p>CX0109-228: 16-18 (Depo. “A: Again, you know, if you want me to answer it, you invest money because you think you’re going to make money.”).</p> |
| 174. | John Fanning’s primary motivation for Jerk was to make money. | CX0181-152:12-20 (Depo. “Q: Sure. In your conversations with John Fanning about his motivations for Jerk, LLC, did you get a sense that John had a primary motivating factor for |

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| | | remember talking about it with John, but don't remember seeing it in writing.") |
| 178. | {Fanning claimed that he advised Jerk, although he is not sure whom he advised.} | CX0092-53:15-20, 65:20-66:2 |
| | Respondents Reused Jerk.com Content | |
| 179. | Respondents planned to use the Jerk.com profile database for other ventures. | CCSMF 180 to 183 |
| 180. | An organizational chart created by a Jerk team member demonstrates the relationship between Jerk, Reper, and Tiptd as NetCapital projects. | CX0634-001 (NetCapital ----SMI Engine ---- Jerk, Reper, Tiptd) CX0629-001-002 ¶ 5 |
| 181. | Reper.com, Jerk.com's sister site operated by John Fanning, used the same underlying code as Jerk.com. | CX0231-001 ("Executive Summary . . . "Reper.com's sister site [is] Jerk.com") CX0663 (email from Fanning: "We have build [sic] a second brand in the reputation space, less edgy more corporate www.reper.com. (I can show you, it's a big leap over current jerk.com implementation))" CX0411-009 (Fanning } CX0664-001 (email from web designer to potential investor: "I've been wanting to start fresh with a new site for a while, so John and I started Reper in April 2010. The idea is to learn from the successes and failures of Jerk.com.") CX0181-217:18-218:2 (Depo. "Q: Can you describe what Reper is? A: It's a similar site |

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| | <p>to Jerk, just under a different brand name. Q: Is there a connection between Jerk and Reper? A: I believe so. Q: What's the connection between Jerk and Reper? A: Well, John Fanning was one connection. Q: How was John Fanning a connection between the two? A: Well, he was basically driving both ventures.”)</p> <p>CX0181-219:18-22 (Depo. “Q: Does Reper run a website? A: I don't know. I've never looked at the Reper website. John and I discussed the Reper website, or the Reper service, which was, as I mentioned, an alternative or a parallel to jerk.”)</p> <p>CX0181-220:13-16 (Depo. “Q: Besides John Fanning, do you know of anyone who's involved in the management or running of Reper? A: No, not – I think it's mainly the same people who were involved in both.”)</p> <p>CX0150-002 (Fanning email discussing how to how to “integrate and upgrade Reper, Jerk.com, and the analytics engine.”)</p> <p>CX0702-001 (email from programmer to Jerk/Reper staff: “New data base created on Reper with all of the code reference to Jerk pointing to the new data base on Reper. done.”)</p> <p>CX0345-001 (email from programmer to Jerk/Reper staff: “Jerk and Reper talk to the same database.”)</p> <p>CX0438-76:2-11 (Depo. A: “I believe one of the ideas was to position Reper.com as the tool -- as the system that would aggregate information about people's reputation information from various sources online. And that Jerk.com would be a social networking site that would essentially be the first client of that service, that would consume the information provided by Reper.com to present</p> |
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| | | 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---- Jerk, Reper, Tiptd) |
| 183. | { | CX0109-213:4-5 CX0411-012 (John Fanning { CX0504 (email exchange among programmers who worked on Jerk; { } |

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