

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

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

_____)	
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.)	
)	
_____)	

ORDER SCHEDULING BRIEFING ON REMAND

On May 9, 2016, the United States Court of Appeals for the First Circuit issued an opinion affirming “the Commission’s entry of summary decision as to liability [in this proceeding] and all provisions of its remedial order except for compliance monitoring as to Fanning.” *Fanning v. Federal Trade Commission*, 821 F.3d 164, 177-78 (1st Cir. 2016). The court vacated and remanded that single portion of the Commission’s order for further proceedings consistent with the court’s opinion. *Id.* at 178. The court’s judgment was entered on May 9, 2016; on January 9, 2017, the Supreme Court denied Mr. Fanning’s petition for a writ of *certiorari*; and the time period for filing a petition for rehearing ended on February 3, 2017 with no such petition having been filed. This proceeding is therefore now pending before the Commission on remand.¹

¹ On August 23, 2016, the Commission issued an *Order Scheduling Briefing On Remand* in this matter, based on the understanding that Mr. Fanning had neither filed a petition for rehearing or rehearing *en banc* with the Court of Appeals nor filed a petition for writ of *certiorari* with the Supreme Court. However, Mr. Fanning subsequently advised the Commission that he had attempted to file a petition for writ of *certiorari* with the Supreme Court; that his petition had been returned to him for failure to comply with the Rules of the Supreme Court; and that the Clerk of Court subsequently granted him an additional sixty days within which to file a corrected petition. The Commission therefore vacated the briefing schedule in the August 23 Order. *Order Modifying August 23, 2016 Order* (Sept. 14, 2016), at <https://www.ftc.gov/system/files/documents/cases/160914jerkorder.pdf>.

The court's remand applies to a single paragraph of the Commission's Final Order issued on March 13, 2015. Paragraph VI of that Order reads, in relevant part:

**VI.
COMPLIANCE MONITORING – JOHN FANNING**

IT IS FURTHER ORDERED that respondent John Fanning, for a period of ten (10) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his current business or employment, or of his affiliation with any new business or employment. The notice shall include respondent's new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities.

The court of appeals stated that this provision requires Mr. Fanning to “notify the Commission of all business affiliations and employment – regardless of whether or not the affiliate or employer has responsibilities relating to the order.” *Fanning*, 821 F.3d at 177. It explained that, “[w]ithout any guidance from the Commission, we cannot find these provisions are reasonably related to Fanning’s violation.” *Id.* at 177.

The Commission has determined that briefing by Mr. Fanning and Complaint Counsel would assist it in resolving the issue presented on remand. Such briefing shall be confined solely to that issue remanded by the court of appeals; that is, the compliance monitoring applicable to Mr. Fanning addressed in Paragraph VI of the Commission's Final Order. Accordingly,

IT IS ORDERED THAT:

1. On or before March 20, 2017, Mr. Fanning shall file a brief, not to exceed 2,000 words, addressing the foregoing issue regarding Paragraph VI of the Commission's Final Order and including proposed alternative language for Paragraph VI;
2. On or before fourteen days after service of Mr. Fanning's brief, Complaint Counsel may file an answering brief not to exceed 2,000 words; and
3. On or before five days after service of Complaint Counsel's answering brief, Mr. Fanning may file a reply brief not to exceed 1,250 words.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED: March 3, 2017