

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
Civil Action No. 5:21-CV-251-BO

BERINGER COMMERCE, INC. d/b/a
BLUE ACORN iCi,

Plaintiff,

v.

FIN CAP, INC. d/b/a “BLUEACORN.CO,”
BLUE ACORN PPP, LLC, BLUE OAK
FOREST, LLC, MICHAEL S. COTA,
JIMMY FLORES, STEPHANIE
HOCKRIDGE REIS, and NATHAN REIS,

Defendants.

**PLAINTIFF’S MOTION TO HOLD
DEFENDANTS IN CONTEMPT OF
COURT AND FOR AWARD OF
DAMAGES, COSTS, AND FEES**

NOW COMES Plaintiff BERINGER COMMERCE, INC. d/b/a BLUE ACORN iCi (“Blue Acorn iCi” or “Plaintiff”), by and through undersigned counsel, and submits this Motion to Hold Defendants in Contempt of Court and for Award of Damages, Costs, and Fees (“Plaintiff’s Contempt Motion”) against Defendants FIN CAP, INC. d/b/a “BLUEACORN.CO,” BLUE ACORN PPP, LLC, BLUE OAK FOREST, LLC, MICHAEL S. COTA, JIMMY FLORES, STEPHANIE HOCKRIDGE REIS and NATHAN REIS (collectively “Defendants”). In support of Plaintiff’s Contempt Motion, Plaintiff states as follows:

On June 10, 2021, Plaintiff filed its Verified Complaint (“Compl.”) [DE-1], seeking relief for trademark infringement, copyright infringement, cybersquatting, unfair competition, and unfair and deceptive trade practices based on Defendants’ operation of an infringing “Blue Acorn PPP” business. This business purports to assist small businesses and contractors in obtaining loans through the federal Paycheck Protection Program (“PPP”) using marks that blatantly infringe upon

Plaintiff's superior and exclusive rights to the "blue acorn" name and associated intellectual property.

On June 10, 2021, Plaintiff also sought a Temporary Restraining Order and Preliminary Injunctive Relief. [DE-8.]

On June 11, 2021, this Court entered a Temporary Restraining Order, ordering Defendants to cease their infringing activities with respect to Plaintiff's intellectual property and to take certain remedial actions [DE-14] ("TRO Order"). To date, despite knowledge of the TRO Order, Defendants have failed to comply with the TRO Order in most material respects. Further, Defendants have failed to cure their violations of the Court's TRO Order despite notice and an opportunity to do so.

Accordingly, Plaintiff now respectfully seeks the following relief from the Court:

- i. An Order holding Defendants in contempt of Court based on their violations of this Court's TRO Order entered on June 11, 2021 [DE-14] and failure to cure such violations, despite adequate notice and ample opportunity to cure;
- ii. An Order compelling Defendants to fully and strictly comply with this Court's June 11, 2021 Order by Friday, June 16, 2021 based on the record before the Court and the certification of undersigned counsel pursuant to this Motion of all efforts made by Plaintiff to obtain Defendants' compliance with the Court's Order and state and federal law, as well as the specific reasons why immediate relief is needed without a further hearing;
- iii. An Order of damages in an amount to be determined by this Court after an opportunity to be heard regarding the same;
- iv. An Order awarding Plaintiff all costs associated with the investigation, filing, and prosecution of this Motion, including attorneys' fees, to be provided by the undersigned through an affidavit; and
- v. Any other relief this Court deems just and proper.

Further support for Plaintiff's Contempt Motion is set forth in the accompanying Memorandum and accompanying exhibits contemporaneously filed and incorporated in this Motion by reference.

Respectfully submitted, this the 16th day of June, 2021

/s/ **Beth A. Stanfield**

Beth A. Stanfield (N.C. State Bar No. 36296)

Thomas Babel (N.C. State Bar No. 35004)

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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the foregoing **PLAINTIFF'S MOTION TO HOLD DEFENDANTS IN CONTEMPT OF COURT AND FOR AWARD OF DAMAGES, COSTS, AND FEES** has been filed with the Clerk for the United States District Court, Eastern District of North Carolina, using the electronic filing system of the Court and that the foregoing was served upon the following persons as follow:

- ✓ By placing a copy, contained in a first-class, postage paid wrapper, into a depository under the exclusive custody of the United States Postage Service, addressed to the parties as indicated below:

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For the Corporate Defendants:

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- ✓ By placing a copy, contained in a first-class, postage paid wrapper, into a depository under the exclusive custody of the United States Postage Service, and electronically mailing as addressed to the parties as indicated below:

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This the 16th day of June, 2021.

/s/ Beth A. Stanfield
Beth A Stanfield
Thomas Babel
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Attorneys for Plaintiff