

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.

**MEMORANDUM IN SUPPORT OF
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 Memorandum in Support of Plaintiff’s 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 this Motion, Plaintiff states as follows:

I. STATEMENT OF THE CASE

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.

As detailed in the Verified Complaint, Compl. ¶ 62, Defendants are operating their business through the following websites:

<https://blueacorn.co/>

<https://blueppp.net/>

<https://blueppp.com/>

<https://ppp.businesswarrior.com/>

<https://getblueacorn.com/>

<https://howndppp.com/>

In addition to Defendants’ pervasive use of the “blue acorn” name and infringing logo throughout their websites, Defendants’ marketing materials also use infringing marks, including an exact copy of Plaintiff’s Acorn Logo, prominently displayed on their YouTube video advertisement and other social media platforms. Compl. ¶¶ 67, 79-83.

As a direct result of Defendants’ widespread marketing and blatant infringement of Plaintiff’s “blue acorn” name and marks, significant, actual consumer confusion has occurred and continues to occur in the marketplace. Specifically, Defendants’ unabated actions have caused thousands of consumers to believe, mistakenly, that Blue Acorn iCi is associated with Defendants or is providing Defendants’ PPP business.

Contemporaneously with the filing of the Verified Complaint, Plaintiff also sought a Temporary Restraining Order and Preliminary Injunctive Relief. [DE-8]. On June 11, 2021, this Court *sua sponte* entered a Temporary Restraining Order that in very plain terms, required

Defendants to cease their infringing activities with respect to Plaintiff's intellectual property and to take certain remedial actions [DE-14] ("TRO Order"). Specifically, the Court's TRO Order unequivocally ordered the following:

Accordingly, it is hereby ORDERED that defendants shall:

1. Cease, desist, and refrain from all use of the words "acorn," "blue acorn," or "blueacorn" or any of their formatives in any manner and on any print or electronic platform of any kind, including but not limited to any website, social media platforms, or any online or print advertising or marketing materials;

2. Cease, desist, and refrain from all use of any acorn images, including a copy of the Acorn Logo, in any manner, including but not limited to any electronic platform, any advertising, and on any public forum;

3. Place a prominent disclaimer on the landing or home page for all websites associated with defendants' business explaining that the website and services at issue are not affiliated with, sponsored by, or otherwise connected to Blue Acorn iCi;

4. Set up an actively monitored email address and dedicated customer service line for customer inquiries and maintain sufficient trained personnel to monitor and respond to such inquiries on a timely basis;

5. Provide detailed information that is prominently displayed on all websites associated with defendants' business, explaining how, where, and when to contact defendants by phone and by email.

To date, despite actual knowledge of the TRO Order, Defendants have failed to comply with the TRO Order in most material respects.

Additionally, Plaintiff has continued to receive unceasing calls and consumer complaints tied to Defendants' PPP business activities since the filing of the Verified Complaint. As demonstrated in the redacted consumer complaints attached as **Exhibit A**¹ and incorporated here by reference, actual consumer confusion continues to date and demonstrates the ongoing

¹The consumer complaints attached as **Exhibit A** have been redacted to remove sensitive, personally-identifying information of third parties. In the interest of expediency, Plaintiff submits this redacted version in support of Plaintiff's Contempt Motion, but will provide unredacted versions to Defendants upon request or seek to file unredacted versions under seal at the Court's direction.

reputational harm at issue. For example, the following email received from a consumer on June 15, 2021, after Plaintiff's numerous communications to correct his confusion, is illustrative:

I apologize for the confusion. It appears that this company stole the identity of your company, in an attempt to appear more legitimate. In the process, they have tarnished your business' reputation. I hope you win your lawsuit against Blue Acorn.co, and you may contact me at any time to share the details of my experience with them. Im willing to testify, and I will be more than happy to show you all screenshots of my communications with them, documents, etc..

See **Exhibit A**. The following letter received in June from another consumer is equally illustrative:

I applied for the PPP loan over 3 weeks ago.
My loan was approved. I uploaded all documents
and the button to press finish will not come up to
submit. I have tried Countless times. please process
my application. I have tried Customer support email
countless times, it will not submit.

p.s. I am currently going through stage 3 breast
Cancer, My business is suffering/Workers need pay,Etc
please assist me in getting my loan processed to the
Bank account on my application. We need this loan.

See **Exhibit A**.

Further, Defendants have failed to cure their violations of the Court's TRO Order despite notice and an opportunity to do so. As a result of Defendants' blatant failure to comply with the TRO Order, Plaintiff now brings the instant motion.

II. FACTUAL BACKGROUND

A. Communications with Defendants Prior to Filing

As further outlined in the Verified Complaint, Plaintiff has made exhaustive attempts to address the deluge of complaints and consumer confusion prior to filing the instant action.

Specifically, Plaintiff sent two cease & desist letters outlining Defendants' blatant infringement and resulting harm to Plaintiff on April 8, 2021 and on May 26, 2021. Compl. ¶¶ 114-123.

Following the second cease & desist letter, the undersigned was contacted by attorney Jeff Meyerson from the law firm of Radix Law in Scottsdale, Arizona, who represents Fin Cap, Inc. d/b/a "Blueacorn.co," Blue Acorn PPP, LLC, and Blue Oak Forest, LLC ("Corporate Defendants"). True and accurate copies of the undersigned's communications with all attorneys representing the Corporate Defendants are attached collectively as **Exhibit B** and incorporated here by reference.

Specifically, on May 27, 2021, Mr. Meyerson stated:

I am in receipt of your letter dated May 26, 2021 regarding the alleged infringement of your client's IP; however, in your letter you stated that we received an April 8, 2021 cease and desist and I cannot find that letter anywhere in our file. Can you please send me a copy of that letter at your convenience. I will discuss with my client and respond to you but I would ask for an extension on your current June 1 response date as it will likely take more time than 2 business days for my client to respond and/or complete the tasks that you are asking of them. I look forward to hearing from you.

Notably, Mr. Meyerson made no claim whatsoever that the Defendants were not engaged in blatant infringement and offered no other defense to the merits of Plaintiff's claims or cease & desist requests. Due to the degree of consumer confusion and associated reputational harm, which necessitated Defendants' immediate actions to comply with the TRO Order, the undersigned responded to Mr. Meyerson as follows on May 28, 2021:

Thank you for your email. We are happy to provide a copy of the April 8, 2021 letter, and my paralegal Jen Reynolds, copied here, will do so. In the meantime, could you please clarify for us the specific individuals and entities you represent and further indicate whether they are, in fact, operating the "Blue Acorn PPP" business, including all advertising, marketing, websites, sales, customer service, etc. As I am sure you can understand from the nature of our initial letter, the lack of response and escalated degree of confusion has created an imminent need for intervention. Once we receive clarification on these items, we will discuss your request for some additional time to respond to our second Cease & Desist letter.

When the undersigned subsequently spoke to Mr. Meyerson over the phone, he was able to provide additional information about the Defendants, including the involvement of Blue Oak

Forrest, LLC, but did not indicate that Defendants were willing stop using the “blue acorn” name, but instead wanted to pursue an alternative solution. The undersigned clearly reiterated Plaintiff’s position that it has a longstanding brand and business reputation to protect, but nevertheless invited Mr. Meyerson to provide an alternative solution to avoid legal action.

Unfortunately, the undersigned heard nothing further from Mr. Meyerson on June 1, 2021—the deadline to cease all infringing activities—or any time over the next ten (10) days. As stated in the Verified Complaint, Defendants failed completely to provide any alternative solution to address Defendants’ infringement and consumer confusion and further failed to take any of the actions outlined in the second cease & desist letter. Compl. ¶¶ 120-123.

Meanwhile, during this time, the volume of calls Plaintiff received regarding Defendant’s business activities continued to escalate. During March 2021, Plaintiff’s Raleigh office received **930** such calls; for the period between April 11, 2021 and May 10, 2021, received **2,558** such calls; and for the period between May 10, 2021 and June 7, 2021, received **3,750** such calls.²

Given Defendants’ silence, total failure to work with the undersigned toward any possible solution, and further failure to remedy the numerous acts of infringement, Plaintiff was forced to file this action, incurring significant fees and costs in doing so.

B. The Filing of the Instant Action

As the Court is well aware, on June 10, 2021, Plaintiff filed the Verified Complaint, with voluminous exhibits documenting Defendants’ blatant infringement, the significant degree of actual consumer confusion impacting Plaintiff’s business activities and reputation, and Plaintiff’s futile attempts to obtain relief short of legal action. Plaintiff also filed a Motion for Temporary Restraining Order and Preliminary Injunctive Relief. [DE-8].

²These numbers are a close approximation as Plaintiff is in the process of confirming these numbers through records from its telephone provider.

On June 11, 2021, the office of the undersigned began the process of service on Defendants and also sent a copy of all filed materials to Mr. Meyerson via email. In response, Mr. Meyerson acknowledged receipt of the materials and requested that Plaintiff copy attorney Michael Dvoren on all future communications, noting that Mr. Dvoren “is the company’s trademark counsel and will be addressing these issues moving forward.” See **Exhibit B**.

Later in the afternoon of June 11, 2021, the Court entered the TRO Order.

C. Communications with Defendants After Entry of the TRO Order

At 4:17 p.m. on June 11, 2021, the undersigned sent a complete copy of the TRO Order to Mr. Meyerson and trademark counsel, Michael Dvoren. Because the undersigned counsel appreciated the Order would require Defendants to undertake several actions to fully comply, including taking down and rerouting websites with the “blue acorn” name and removing all infringing “blue acorn” marks, the undersigned counsel asked that Defendants’ counsel “provide us with confirmation of compliance with each item of this Order by Monday, June 14, 2021.” **Exhibit B**. This provided Defendants’ three days in which to complete the items ordered by this Court.

From the time Corporate Defendants have had actual notice of this Court’s Order on June 11 to the date of this Motion on June 16, 2021, **Defendants have failed to comply with the Order in most material respects.**³

On Monday, June 14, 2021, Mr. Meyerson emailed the following statement:

Our clients (Fin Cap, Inc., Blue Acorn PPP, LLC and Blue Oak Forest, LLC only) are working diligently to comply with the TRO. They’ve already placed a conspicuous disclaimer on the <https://blueacorn.co/> home page and have a dedicated support page linked from the disclaimer to <https://blueacorn.co/support/>. They’ve also changed the logo

³To date, the undersigned is unaware of any counsel representing the individual Defendants and has been attempting to serve them with a copy of the TRO Order as directed by this Court. Service efforts are ongoing. Nonetheless, given the relationship between the individual Defendants and the Corporate Defendants, it would strain credulity for the individual Defendants to claim they have no knowledge of the instant lawsuit or the Court’s entry of the TRO Order.

on the YouTube channel (see <https://www.youtube.com/channel/UCAiOYwr-WYtOisKibpOI3Ig>). Other actions are still in progress. We'll update you as those advance.

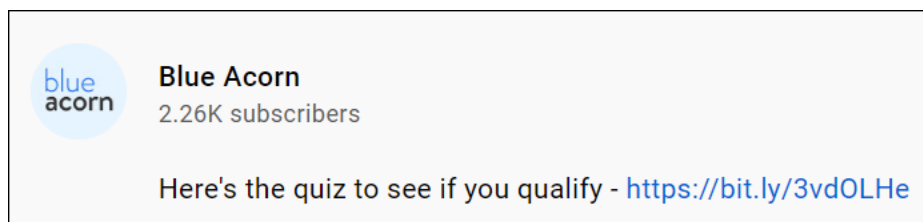
Exhibit B.

Not only did the content of Mr. Meyerson's email confirm that Defendants have no intent whatsoever to comply with this Court's Order, an investigation of the items offered for compliance further demonstrate clear, flagrant defiance of this Court's TRO Order.

First, Defendants' June 14, 2021 statement about changes Defendants have made to their **www.blueacorn.co** website patently demonstrates they have no intention of complying with Paragraph 1 of the Court's Order, which unambiguously requires Defendants to **stop using the "blue acorn" name in any form or on any platform, including websites.**

The existence and use of the **www.blueacorn.co** website itself represents the central core of Defendants' infringing activities from which the vast amount of consumer confusion billows. Anything short of full compliance with the Court's order to cease and desist from use of the "blue acorn" name *on* or *in* or *through* any website connected with Defendants, including the name of the website itself, is no compliance at all.

Second, Defendants' June 14, 2021 statement that they removed the infringing Acorn Logo from the YouTube advertisement is equally confounding and disingenuous. When the undersigned attempted to verify the removal of the Acorn Logo, the following appeared:



Thus, while Defendants removed the Acorn Logo image from where it previously appeared, they merely replaced it **with yet another infringing mark.**

Defendants’ attempt to “comply” with the Court’s TRO Order by replacing an infringing mark with an equally infringing mark is entirely confounding and completely ineffective in curing the ongoing infringement and confusion caused by Defendants’ use of the “blue acorn” name. To the contrary, Defendants’ actions—with full knowledge of the Court’s TRO Order—only perpetuate the confusion, harm, and cost to Plaintiff while failing utterly to demonstrate any modicum of deference to this Court and the plain language of its TRO Order.

Third, an inspection of Defendants’ multiple websites and social medial platforms on June 14, 2021s showed that Defendants had not taken *any steps* to remove the following infringing mark:



Again, in direct contravention of the Court’s Order, Defendants have been ordered to stop using the infringing “blue acorn” name in any form. When the undersigned counsel reminded Mr. Meyerson that Defendants’ continued, infringing use of this mark was a clear violation of the Court’s Order, the undersigned attempted give Defendants’ the benefit of doubt that perhaps removal of these marks was an oversight or part of the “in progress” actions noted by Mr. Meyerson in his June 14, 2021 email.

Unfortunately, Defendants’ behavior since June 14, 2021 unequivocally shows that they should be afforded no benefit of doubt as there is none. As shown in the materials attached as **Exhibit C** and incorporated here by reference, screenshots taken on the date of this Motion and in the hours leading up to its filing show that Defendants have no intention of complying with this Court’s June 11, 2021 Order.

Defendants are still using their **www.blueacorn.co** and **www.getblueacorn.com** websites; Defendants are still using the “blue acorn” logo on all their websites and social media platforms; and Defendants are still using the Acorn Logo on social media pages. In addition, Defendants’ infringing **www.blueacorn.co** website proudly touting Defendants’ ability to obtain over “**\$8 Billion**” in PPP loans for its customers confirms that Defendants have the financial resources to immediately and fully comply with the TRO Order.



See **Exhibit C**.

However, other than replacing the Acorn Logo on one of their YouTube pages (and replacing it with another infringing mark) and uploading extremely small disclaimer language right under the large, infringing “blue acorn” name, Defendants have done virtually nothing to comply with the Court’s TRO Order.

When the undersigned brought these blatant compliance failures to Defendants’ counsels’ attention on June 14, 2021, the undersigned requested confirmation of full compliance to be received by June 15, 2021. Such confirmation was not provided.

On the afternoon of June 15, 2021, and while waiting on confirmation of compliance from Mr. Meyerson, the undersigned received a phone call from attorneys John McElwaine from the Charleston, South Carolina office of Nelson Mullins and Chris Blake from the firm’s Raleigh

office. During that call, Mr. McElwaine and Mr. Blake indicated they had also been retained to represent the Corporate Defendants in this action and indicated they were considering filing a motion to dissolve this Court's June 11, 2021 Order on the grounds that it was entered without an "attorney certification." Mr. McElwaine and Mr. Blake further confirmed they had received the undersigned counsel's June 14, 2021 communications with Mr. Meyerson and Mr. Dvoren outlining Defendants' continued, flagrant defiance of this Court's Order. Mr. McElwaine and Mr. Blake did not substantively address these continued failures or provide any indication to undersigned counsel that these violations would be cured.

Finally, it is noted that the disclaimer language Mr. Meyerson represented to have posted on or before June 14, 2021 did not actually appear on the "blueacorn.co" home page until late this afternoon, June 16, 2021. While Plaintiff appreciates Defendants' efforts—albeit deficient—to comply with Paragraph 3 of the TRO Order with respect to the **www.blueacorn.co** home page, it is impossible to overlook Defendants' other, glaring failures to comply with the rest of the TRO Order, including retention of large infringing marks on that very same page. See **Exhibit C**.

Indeed, the **www.blueacorn.co** website itself and its home page continue to boldly display the infringing "blue acorn" name and logo, which this Court has unequivocally ordered Defendants to remove. Even worse, Defendants' addition of "disclaimer" language the very afternoon of this filing (which itself is not fully compliant with the directives of the TRO Order) proves Defendants have had **sufficient notice, awareness, knowledge, counsel, resources, finances, time, and ability** to conform to *some* aspects of the TRO Order. However, this only serves to shine a spotlight on Defendants' evident decision to defy this Court in all other material respects. Apparently, Defendants have simply decided for themselves which paragraphs of the Court's Order that it will comply with and which paragraphs they will just ignore.

Notably, throughout all communications with the Corporate Defendants, not once has any defense been put forward regarding the core, underlying facts pled in the Verified Complaint, the infringing conduct of Defendants, Plaintiff's right to relief under state and federal law, or the authority of this Court to grant that relief. Rather, Defendants' counsels' communications indicate Defendants have 1) full knowledge of their infringement; 2) full knowledge of the Court's TRO Order; 3) clear ability to comply with the Order; 4) ample time to comply with the Order; and 4) despite all this, no intent to comply.

The undersigned is not aware of any clearer case for relief by way of contempt and an award of severe monetary sanctions and payment of all attorneys' fees and costs.

III. LEGAL STANDARD

"Violations of injunctions entered by this Court are punishable as contempt of court." *Rainbow Sch., Inc. v. Rainbow Early Educ. Holding LLC*, No. 5:14-CV-482-BO, 2016 WL 7243538, at *1 (E.D.N.C. Dec. 14, 2016) (unpublished), *aff'd*, 887 F.3d 610 (4th Cir. 2018) (citing *Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 833 (1994)). "To ensure compliance with its orders, a district court has the inherent authority to hold parties in civil contempt." *Rainbow Sch., Inc.*, 887 F.3d at 617 (citing *Shillitani v. United States*, 384 U.S. 264, 270 (1966)). Civil contempt is designed to coerce future behavior, and this inherent authority "includes the ability to award damages and attorney's fees to an aggrieved party." *Id.* (citing *Hutto v. Finney*, 437 U.S. 678, 691 (1987)).

"Civil contempt may . . . be punished by a remedial fine, which compensates the party who won the injunction for the effects of his opponent's noncompliance." *Hutto*, 437 U.S. at 691. "A court may impose sanctions for civil contempt 'to coerce obedience to a court order or to compensate the complainant for losses sustained as a result of the contumacy.'" *Cromer v. Kraft*

Foods N. Am., Inc., 390 F.3d 812, 821 (4th Cir. 2004) (quoting *In re Gen. Motors Corp.*, 61 F.3d 256, 258 (4th Cir. 1995)). A party can be held in civil contempt when there is clear and convincing evidence of the following four elements:

(1) the existence of a valid decree of which the alleged contemnor had actual or constructive knowledge; (2) that the decree was in the movant's favor; (3) that the alleged contemnor by its conduct violated the terms of the decree, and had knowledge (at least constructive knowledge) of such violations; and (4) that the movant suffered harm as a result.

Rainbow Sch., Inc., 887 F.3d at 617 (internal quotations and citations omitted). Further, “[w]illfulness is not an element of civil contempt.” *In re Gen. Motors Corp.*, 61 F.3d at 258 (citation omitted). Upon finding civil contempt, district courts have broad discretion to determine an appropriate remedy. *Id.* at 259.

Every element of civil contempt is clearly and convincingly shown here.

IV. ARGUMENT

A. Defendants had knowledge of the Court's June 11, 2021 TRO Order

The first element to support a finding of civil contempt is “the existence of a valid decree of which the alleged contemnor had actual or constructive knowledge”. *Rainbow Sch., Inc.*, 887 F.3d at 617. The Court's TRO Ordered was signed, entered, and published on the docket of record in this matter on June 11, 2021, and has not since been reversed, amended, altered, or withdrawn. *See Ashcraft v. Conoco, Inc.*, 218 F.3d 288, 302 (4th Cir. 2000) (reversing an order to seal certain documents and holding that it was not a valid decree to support a finding of civil contempt).

Here, the Corporate Defendants have actual knowledge of the TRO Order as shown by their counsels' communications acknowledging the existence, applicability, and responsibility to comply with the TRO Order. In addition, despite their fundamental deficiencies, the validly and knowledge of the Order is further evidenced by the Corporate Defendants' ability to comply with

some aspects of the Order. The Corporate Defendants' knowledge should be imputed to the individual Defendants given the relationship between all Defendants. As such, all Defendants have at least constructive knowledge of the existence of the TRO Order.

B. The June 11, 2021 TRO Order was in Plaintiff's Favor

The second element to support a finding of civil contempt is that "the decree is in movant's favor." *Rainbow Sch., Inc.*, 887 F.3d at 617. This element is easily met. The Court's TRO Order required Defendants to cease all infringing activities with respect to Plaintiff's intellectual property and to take certain remedial actions regarding the same—all of which are in Plaintiff's favor.

C. Defendants Violated the June 11, 2021 TRO Order and had Knowledge of the Same

The third element to support a finding of civil contempt is "that the alleged contemnor by its conduct violated the terms of the decree and had knowledge (at least constructive knowledge) of such violations." *Rainbow Sch., Inc.*, 887 F.3d at 617. As discussed above, Defendants have flagrantly failed to comply with the Court's TRO Order in most material respects. Indeed, Defendants have failed to cease using the "blue acorn" name; have removed some of the Acorn Logo images, but have simply replaced them with yet another infringing mark; and are still using the infringing blue acorn mark on all their websites and social media platforms.

The undersigned brought these blatant compliance failures to the attention of Corporate Defendants' counsel on June 14, 2021, giving Defendants notice and an opportunity to cure these defects. And yet, as of the filing of this Motion, Defendants have failed to cure these deficiencies. In addition, Defendants' addition of the noncompliant "disclaimer" language this afternoon proves they have had sufficient notice, awareness, knowledge, counsel, resources, time, and ability to conform to *some* aspects of the Court's TRO Order, while inexplicably failing to comply with the vast majority of this Court's directives, particularly those that are at the heart of Plaintiff's

infringement claims and actual consumer confusion. Defendants' conduct is not an accident or an oversight. It is intentional and demonstrates a stunning level of defiance before this Court.

D. Plaintiff Suffered Harm as a Result of Defendants' Violations of the June 11, 2021 TRO Order

The fourth and final element to support a finding of civil contempt is "that the movant suffered harm as a result." *Rainbow Sch., Inc.*, 887 F.3d at 617. In finding civil contempt for failure to comply with an injunction regarding intellectual property, this Court has previously recognized the presumed harm that flows from intellectual property infringement. *See Rainbow Sch., Inc.*, 2016 WL 7243538, at *3. Further, in determining that entry of the TRO was warranted, this Court made specific findings regarding the harm being suffered by Plaintiff:

Specifically, plaintiff has sufficiently demonstrated on the basis of its pleadings that it will suffer irreparable injury in the form of actual consumer confusion, the likelihood of continued consumer confusion, plaintiff's inability to conduct its own business affairs due to the volume of defendants' customer complaints directed to plaintiff, and serious reputational harm such that temporary emergency relief is warranted.

TRO Order [DE-14] at 2. This harm that existed at the time the Court entered the TRO Order on June 11, 2021, has only continued in the interim given Defendants' refusal to cease their infringing activities and comply with this Court's TRO Order. In addition, Plaintiff has incurred significant, additional attorneys' fees and costs, as well as continued reputational loss and business interruption with resultant financial harm.

Unfortunately, as of the date and time of this Motion, Defendants' brazen defiance of this Court's directives remain the *status quo*. The materials attached as **Exhibits A through C** show: 1) Defendants' continued violations of the TRO Order; 2) undersigned counsels' attempts to obtain compliance; 3) Plaintiff's ongoing and immediate need for injunctive relief; 4) the ongoing harm

to Plaintiff, including monetary damages and reputational loss; and 5) the need for immediate action on this Motion to compel Defendants' compliance.

In summary, clear and convincing evidence showing all four elements are present to support a finding of civil contempt against Defendants regarding their failure to comply with this Court's clear and unequivocal directives in the TRO Order. This Court should exercise its inherent authority and determine that Defendants are in contempt of its June 11, 2021 TRO Order.

V. CONCLUSION

For the reasons set forth above, Blue Acorn iCi requests that this Court grant its Motion to Hold Defendants in Contempt of Court and for Award of Damages, Costs, and Fees, and grant the following relief:

- 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.

Respectfully submitted this 16th day of June, 2021.

/s/ Beth A. Stanfield

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

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the foregoing **MEMORANDUM IN SUPPORT OF 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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- ✓ 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
Laura K. Greene

Attorneys for Plaintiff