

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, JAMES FLORES,
STEPHANIE HOCKRIDGE REIS, and
NATHAN REIS,

Defendants.

DECLARATION OF JUDY GEASLEN

I, Judy Geaslen, Chief Financial Officer of BERINGER COMMERCE, INC. d/b/a BLUE ACORN iCi, (“Blue Acorn iCi”) declare under penalty of perjury pursuant to 28 U.S.C. § 1746 as follows:

1. At the time of the filing of the Memorandum in Support of Plaintiff’s Motion for Contempt (“Memorandum”), I was in process of obtaining call log information to attempt to confirm the incoming calls Blue Acorn iCi’s Raleigh office had received related to Defendants’ PPP business activities.

2. Due to an inadvertent error in communication, the Memorandum mistakenly identified the total number of incoming calls Plaintiff’s Raleigh office received between March and June as incoming calls related to Defendants’ business activities.

3. After confirming with our telephone provider, it is not possible to segregate the incoming calls received related to Defendants' PPP business through our accessible call log data. However, we have confirmed the overwhelming number of "Blue Acorn PPP" calls through evaluation of the call history for the Raleigh office.

4. Specifically, review of the call log data shows a tremendous increase in incoming calls received to our Raleigh office after Defendants began wrongfully advertising its PPP business—using the Blue Acorn IP—in the spring of 2021.

5. In January of 2021, our Raleigh office received a total of **1,168** incoming calls.

6. In February of 2021, our Raleigh office received a total of **1,065** incoming calls.

7. These January and February 2021 incoming call numbers are consistent with the historical call volume for our Raleigh office.

8. In March of 2021, as Defendants began advertising using the trade names "Blue Acorn," "Blue Acorn PPP," "blueacorn.co," and operating numerous "blue acorn" related websites using infringing marks, the number of incoming calls our Raleigh office began to increase with hundreds of calls from consumers who mistakenly believe Blue Acorn iCi is affiliated with, or providing the PPP services associated with, Defendants.

9. In April and May of 2021, the call volume exploded.

10. In April of 2021, our Raleigh office received **2,294** incoming calls—or approximately **two times the normal call volume**.

11. In May of 2021, our Raleigh office received **4,311** incoming calls. The incoming calls received in the month of May alone were approximately **four times the normal volume** of incoming calls to our Raleigh office.

12. It is absolutely clear that the dramatic and continued increase in call volume is directly and wholly related to Defendants' infringement and resulting consumer confusion.

13. Data available for the partial month of June shows that the dramatic increase in call volume related to Defendants' PPP business continues unabated.

14. A review of the incoming call data for our Charleston office reveals the same trend, with the number of incoming calls beginning to sharply increase in March and continuing exponentially in April and May.

15. Blue Acorn iCi continues to be overwhelmed by the number and nature of confused consumer calls and communications. Both the Raleigh office and the Charleston office have experienced, and continue to experience, extreme business disruption and inability to carry out normal business activities.

16. I have personally received and handled hundreds of calls from confused consumers relating to Defendants' PPP business. As averred in the Verified Complaint, these consumers are incredibly angry, frustrated, desperate, fearful, and confused. Due to Defendants' profoundly poor or nonexistent customer service, consumers are unable to contact Defendants. Moreover, consumers have serious concerns about Defendants' collection and use of their bank account numbers and what is being done with their PPP loan funds.

17. Blue Acorn iCi's reputation and goodwill is being harmed because consumers believe our company is the source of the poor and concerning business practices of Defendants.

18. In addition, the sheer number of phone calls (and other types of consumer contacts) have made it impossible to respond or reply to all the consumers who are reaching out believing we are associated with Defendants' PPP business—exacerbating the reputational harm to Blue Acorn iCi since it cannot possibly correct or explain the rampant confusion.

19. Because Defendants continue to use and infringe on Blue Acorn iCi's brand and logo, immediate injunctive relief is absolutely necessary to address the overwhelming consumer confusion that is ongoing.

20. In addition, Defendants have been aware of this problem since March 2021.

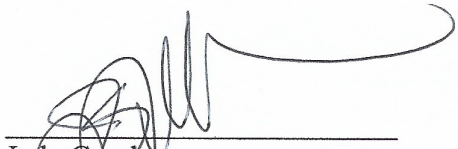
21. Specifically, as we were overwhelmed by these communications in March, I attempted to reach out directly to Defendants regarding the volume of communications we had received from customers of Defendants' PPP business.

22. Specifically, on March 27, 2021, I sent a message through LinkedIn to Defendant Stephanie Hockridge Reis, whose LinkedIn profile identifies her as the Co-Founder of blueacorn.co. In that message, I identified our company; informed her that our company had been inundated with calls and other contacts by customers of Defendants' PPP business; notified her that we had begun receiving financial information directly from those customers and in response had to shut down our online support portal; and requested that they provide appropriate contact information on their social media platforms to address the customer confusion. A true and correct copy of this message is attached is **Exhibit A** and incorporated herein. I did not receive a response to this March 27, 2021 message to Defendant Stephanie Hockridge Reis.

23. Similarly, on March 29, 2021, I sent a substantially identical message through LinkedIn to Defendant Jimmy Flores, whose LinkedIn profile identifies him as the Founder of FIN CAP, Inc. dba Blueacorn.co. A true and correct copy of this message is attached is **Exhibit B** and incorporated herein. I did not receive a response to this March 29, 2021 message to Defendant Jimmy Flores.

I declare under penalty of perjury that the foregoing is true and correct.

Executed, this the 22nd day of June, 2021.



Judy Geaslen
Chief Financial Officer
BERINGER COMMERCE, INC. d/b/a
BLUE ACORN iCi

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the foregoing **DECLARATION OF JUDY GEASLEN** 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 which will send notification to the following counsel of record:

Christopher J. Blake
N.C. State Bar No. 16933
D. Martin Warf
N.C. State Bar No. 32982
Nelson Mullins Riley & Scarborough LLP
4140 Parklake Ave, Suite 200
Raleigh, NC 27612
Chris.blake@nelsonmullins.com
Martin.warf@nelsonmullins.com

*Attorneys for Defendants Fin Cap, Inc, Blueacorn PPP,
LLC and Blue Oak Forest, LLC*

✓ 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

Michael S. Cota
2138 S. Valle Verde Cir
Mesa, AZ 85209

James M. Flores
7833 E. Harvard Street
Scottsdale, AZ 85257

Stephanie Hockridge Reis
4747 N. Scottsdale Road, Unit C
Scottsdale, AZ 85251

Nathan Reis
4747 N. Scottsdale Road, Unit C
Scottsdale, AZ 85251

This the 22nd day of June, 2021.

/s/ Beth A. Stanfield
Beth A Stanfield
Laura K. Greene
Thomas Babel

Attorneys for Plaintiff