

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.

SECOND 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:

Consumer Complaints and Investigative Inquiries

1. On June 22, 2021, I submitted a Declaration [DE-28] (“First Declaration”) detailing the tremendous increase in incoming calls received to Blue Acorn iCi’s Raleigh and Charleston offices after Defendants wrongfully began advertising its PPP business—using the Blue Acorn IP—in the spring of 2021. These are not the only Blue Acorn iCi offices, but these phone records were reviewed as representative samples.

2. Specifically, 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 mark, the number of incoming calls our Raleigh and Charleston offices received began to increase with hundreds of calls from consumers who mistakenly believe Blue Acorn iCi is affiliated with, or providing the PPP loan services associated with Defendants.

3. In April of 2021, our Raleigh office received approximately **two times** the normal call volume.

4. In May of 2021, our Raleigh office received approximately **four times** the normal call volume.

5. Calls to our Charleston office during this time frame reflected the same trend.

6. In June and for the partial month of July, the dramatic increase in call volume related to Defendants' PPP business has continued unabated for both our Raleigh and Charleston offices.

7. 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.

8. 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.

9. 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.

10. 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.

11. Since the filing of the Verified Complaint, in addition to phone calls, Blue Acorn iCi has continued to receive written consumer complaints related to Defendants' PPP business. The vast majority of these consumer complaints express concerns about the status of their PPP loan funds, request information on that status, and provide sensitive personal and financial information.

12. True and accurate redacted copies of consumer complaints received since the filing of the Verified Complaint, in addition to notices to creditors in certain individuals' Chapter 7 Bankruptcy proceedings, are attached as **Exhibits A through J and Exhibit L**.¹

13. As **Exhibits A through J and Exhibit L** show, the consumers reaching out to Blue Acorn iCi are confused about whether there is a connection between Blue Acorn iCi and Defendants' PPP business. These complaints are not merely misdirected or careless contacts.

14. Indeed, the June 24, 2021 voicemail transcription attached as **Exhibit H** shows that a previous customer of Blue Acorn iCi applied for a PPP loan through Defendants' PPP business, believing that Defendants' PPP business was connected with Blue Acorn iCi, clearly showing confusion about the source of Defendants' PPP business. The customer explains that he chose that company believing it to be operated by Blue Acorn iCi and expresses his frustration with the

¹ All attached exhibits 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 the Second Declaration of Judy Geaslen, but will provide unredacted versions to Defendants upon request or seek to file unredacted versions under seal at the Court's direction. Redacted copies of **Exhibits A through D** were previously filed as [DE-16-1], Exhibit A to Plaintiff's Brief in Support of its Motion for Contempt.

services provided by Defendants' PPP business, showing the reputational harm resulting from Defendants' infringing activity.

15. In addition to consumer complaints and notices to creditors, Blue Acorn iCi has received multiple subpoenas and investigative contacts from prosecutors and consumer affairs departments from several states.

16. **Exhibit F** to the Verified Complaint contains copies of formal inquiries from the State of Tennessee Division of Consumer Affairs and a Grand Jury Subpoena from the Commonwealth of Massachusetts, both seeking information about Defendants' PPP business.

17. After the filing of the Verified Complaint, Blue Acorn iCi continued to receive formal investigative inquiries.

18. True and correct copies of redacted correspondence from the Arizona Attorney General's Consumer Protective Office seeking responses to four discrete consumer complaints related to Defendants' PPP business are attached as **Exhibit K**.

19. A true and correct copy of a redacted subpoena from the State Attorney's office for the Eleventh Judicial Circuit of Florida seeking information about Defendants' PPP business is attached as **Exhibit M**.

20. Blue Acorn iCi has had to retain counsel to respond to these formal inquiries to explain that it has no connection with the "Blue Acorn PPP" business under investigation by these agencies.

Blue Acorn iCi's Use of the Blue Acorn IP, Advertising, and Customer Base

21. Blue Acorn iCi's continuous and exclusive commercial use of the BLUE ACORN ICI mark in commerce dates back to March 31, 2019 in connection with Blue Acorn iCi's services.

22. Blue Acorn iCi's continuous and exclusive use of the BLUE ACORN mark in commerce dates back to 2007 in connection with Blue Acorn iCi's services.

23. Blue Acorn iCi's continuous and exclusive use of the Acorn Logo mark in commerce dates back to 2009 in connection with Blue Acorn iCi's services.

24. Since 2009, Blue Acorn iCi and its Predecessors have advertised and promoted its business in all states within the United States using both the BLUE ACORN and Acorn Logo marks, including both North Carolina and Arizona, where some Blue Acorn iCi customers maintain their principal place of business.

25. Since 2019, Blue Acorn iCi and its Predecessors has advertised and promoted its business in all states within the United States using the BLUE ACORN ICI mark, including both North Carolina and Arizona, where some Blue Acorn iCi customers maintain their principal place of business.

26. Blue Acorn iCi currently has customers in nearly all states, including North Carolina and Arizona.

27. While the new BLUE ACORN ICI mark was created in 2019, Blue Acorn iCi continues to use the BLUE ACORN mark and it has not been abandoned. Specifically, to date, Blue Acorn iCi continues to use the BLUE ACORN mark in some advertising and on invoices, and continues to be prominently displayed on various client websites to advertise the services being offered by Blue Acorn iCi.

Need for Injunctive Relief

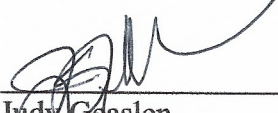
28. The volume of Defendants' PPP business and advertising further increases the customer confusion with which Blue Acorn iCi has had to contend. A true and correct copy of a New York Times article discussing the volume of Defendants' PPP business is attached as **Exhibit**

28. The volume of Defendants' PPP business and advertising further increases the customer confusion with which Blue Acorn iCi has had to contend. A true and correct copy of a New York Times article discussing the volume of Defendants' PPP business is attached as Exhibit N. This national attention, including media attention, is further enhancing confusion (both among consumers and among investigative bodies).

29. Because Defendants continue to use and infringe on Blue Acorn iCi's brand and logo (the BLUE ACORN ICI mark, the BLUE ACORN mark, and the Acorn Logo mark), immediate injunctive relief is absolutely necessary to address the overwhelming consumer confusion that is ongoing.

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

Executed, this the 6th day of July, 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 **SECOND 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:

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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, addressed to the parties as indicated below

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This the 6th day of July, 2021.

/s/ Beth A. Stanfield
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Attorneys for Plaintiff