

EXHIBIT D

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

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

Plaintiff,

vs.

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.

Civil Action No. 5:21-cv-251-BO

**DEFENDANTS’ FIRST SET OF
INTERROGATORIES TO PLAINTIFF
BERINGER COMMERCE, INC., d/b/a
BLUE ACORN, iCi**

Defendants Fin Cap, Inc., Blueacorn PPP, LLC and Blue Oak Forest, LLC (collectively, “Blueacorn PPP” or “Defendants”), through their attorneys, hereby request that Plaintiff Beringer Commerce, Inc., d/b/a Blue Acorn, iCi (“BCI”), respond appropriately to the following interrogatories separately and fully, in writing, under oath, within thirty (30) days of service hereof to undersigned counsel. These Interrogatories are continuing in nature, and Defendants request that all responses to these Interrogatories be supplemented in accordance with Rule 26(e) of the Federal Rules of Civil Procedure.

DEFINITIONS

1. “Communication” means every form of written and non-written communication between or involving one or more persons, by whatever means accomplished.
2. “Document” or “Documents” shall have the broadest meaning ascribed to it by Rule 34 of the Federal Rules of Civil Procedure, including, without limitation, any written,

recorded, or graphic matter or recording of symbols in tangible or electronic form, however recorded, produced or reproduced, of every kind, whether in draft or final form, and regardless of where located, including, but not limited to correspondence, handwriting, records, transcripts, minutes, agreements, contracts, memoranda, notes, statements, maps, written analyses, reports, tape recordings, papers, books, computer printouts, diaries, journals, schedules, databases, worksheets, computer records, computer logs, video recordings and records of oral or other sound communications; all electronic mail and information about electronic mail; all social media content (including posts, comments or messages on Facebook, Twitter, Pinterest, Instagram, LinkedIn, Reddit or any other social networking or social media site), blog posts or comments, website postings or entries and content stored in applications including on mobile and wearable computing devices; text messages; all databases (including all records and fields, tables, table keys and structural information in such databases); all program files and file fragments; and any other electronically stored information not otherwise specified.

3. “Evidencing” means, in addition to its customary and usual meaning, reflecting, describing, displaying, exhibiting, summarizing, establishing, supporting, proving, depicting, fixing, recording, reporting, tending to establish, or tending to prove.

4. “Identify” with respect to any person means name, title, employer, personal and business address, email address, phone number.

5. “Including” is a term that is used when examples are given for the purpose of edifying the meaning of a request and is never meant to limit the request’s scope.

6. “Person” means and includes any natural person, partnership, joint venture, cooperative or unincorporated association, public or private corporation, public entity or other

entity, or any affiliate, officer, director, employee, agent, representative or attorney of any of the foregoing.

7. “You” and “your” shall mean the party to whom these interrogatories are addressed and your representatives, attorneys, agents, experts, investigators, insurers, consultants, or anyone acting on behalf of the foregoing.

8. The terms “concerning,” “referring to,” or “relating to” mean constituting, consisting of, regarding, associated with, or in any way connected with the matter discussed, in whole or in part.

INSTRUCTIONS

1. You are required to respond separately and fully to each Interrogatory.
2. In answering these Interrogatories, you are requested to furnish all information known or available to you regardless of whether this information is possessed: directly by you, or your agents, employees, representatives, or investigators; your affiliates, predecessors or corporations or partnerships; or by any other legal entities controlled by or in any manner affiliated with you.
3. If any of these Interrogatories cannot be answered in full, answer to the extent possible, specifying the reasons for your inability to answer the remainder and stating whatever information, knowledge or belief you have concerning the unanswered portion.
4. If an objection is made to any Interrogatory, state the reason for the objection with enough specificity to permit the evaluation of the objection by Defendants.
5. These Interrogatories are continuing in nature. If, at any time after service of the initial answers hereto and prior to the trial of this action, you obtain additional information responsive to these Interrogatories, you are required promptly to supplement or amend your answers hereto in accordance with Rule 26(e) of the Federal Rules of Civil Procedure.
6. If any of the information requested is claimed to be immune from discovery on

the grounds of privilege, describe the basis of the privilege claimed and describe the information alleged to be privileged in detail sufficient to enable the Court to decide if the privilege has been properly invoked.

INTERROGATORIES

1. Identify the “over 169” clients of BCI and the average revenue for BCI per client.

RESPONSE:

2. For each of the years 2018, 2019, 2020 and 2021, please state the amount of BCI’s total annual revenue and net profit. If BCI’s 2021 fiscal year is not yet complete, please projection or estimate of BCI’s revenue and net profit for 2021.

RESPONSE:

3. Identify all efforts to promote BCI’s services specifically to independent contractors and self-employed individuals, such as Uber drivers and hair stylists, or companies with net annual incomes of approximately \$150,000.00 or less.

RESPONSE:

4. Identify the systems or processes that BCI uses to receive, log, monitor, record, and/or respond to:
 - a. incoming phone calls to phone numbers BCI maintains;
 - b. website inquiries or online requests for information;

- c. general inquiry or generic customer service email inboxes (i.e. not emails directed to a particular individual but to BCI);
- d. social media communications; and
- e. or physical mail.

If these processes or systems involve people, please identify the associated people.

RESPONSE:

5. Identify the volume (number of) of communications for each type of communication referenced in paragraph 86 of the Verified Complaint that was received by BCI between October 1, 2020 and March 31, 2021.

RESPONSE:

6. Identify the volume (number of) of communications for each type of communication referenced in paragraph 86 of the Verified Complaint that was received by BCI in April, May, June and July of 2021.

RESPONSE:

7. Identify any changes, amendments, or alterations to the systems or processes identified in response to Interrogatory Number 4 that were made or done in response to receiving correspondence intended for Blue Acorn PPP.

RESPONSE:

8. Identify each known and allegedly improper use by Blue Acorn PPP of the tilted blue acorn mark referenced in the Verified Complaint.

RESPONSE:

9. Identify each known and allegedly improper use by Blue Acorn PPP of the BCI trademarks referenced in the Verified Complaint other than the tilted blue acorn.

RESPONSE:

10. Beyond hosting a website, identify or describe the specific marketing steps and/or branding efforts of BCI using the trademarks referenced in the Verified Complaint conducted outside of North Carolina since October 2020.

RESPONSE:

11. Identify and describe in detail each instance where a customer of BCI has stated or otherwise indicated that BCI's services were rendered by, or affiliated with, Blue Acorn PPP.

RESPONSE:

12. Identify the factual basis for each item damages claimed by BCI in this case, including the methodology used for calculating those damages.

RESPONSE:

13. To the extent any portion of BCI's alleged damages are calculated based upon an hourly rate for time allegedly spent receiving, addressing or handling misdirected calls and communications intended for Blueacorn PPP, identify the following:

- a. The amount of the hourly rate;
- b. The methodology used to calculate the amount of the hourly rate;
- c. The total number of man hours against which the hourly rate was applied, broken down by identity of employee, job position and number of hours;
- d. The annual salaries of each of the BCI employees identified in response to subparagraph c. above; and
- e. The total amount of the damages allegedly suffered by BCI calculated by using the hourly rate.

RESPONSE:

14. To the extent BCI's alleged damages include any damages for any claimed loss of reputation or other reputational damages, identify:

- a. The total amount of such alleged reputational damages;
- b. The methodology by which such alleged reputational damages were calculated;
and
- c. All facts and evidence which support or otherwise relate to such alleged reputational damages.

RESPONSE:

15. To the extent BCI's alleged damages include any lost business, lost opportunities, or lost customers that were allegedly caused by any alleged conduct of Blueacorn PPP:

- a. Identify all such lost business, lost opportunities or lost customers, specifically including the name, address and contact person at any such customer or prospect;
and
- b. Identify with specificity how alleged conduct of Blueacorn PPP caused BCI to lose any business, opportunity or customer.

RESPONSE:

16. To the extent BCI's alleged damages include any damages associated with alleged interruption of BCI's business that was allegedly caused by any alleged conduct of Blueacorn PPP:

- a. Identify with specificity the manner in which BCI's business was allegedly interrupted; and
- b. Identify with specificity how alleged conduct of Blueacorn PPP caused BCI to suffer any interruption to its business.

RESPONSE:

17. Identify the channels of trade in United States through which the BCI's services have been promoted or rendered in association from the date of first use until present.

RESPONSE:

18. Identify the advertising used by BCI to market, sell, distribute, and reach its customers, including the media used, the geographic areas in which advertising occurs, and a description of the content of the advertisements.

RESPONSE:

19. Consistent with the Case Management Order, identify all testifying expert witnesses and the basis for their opinions in this Action.

RESPONSE:

This 16th day of November, 2021.

NELSON MULLINS RILEY & SCARBOROUGH LLP

A handwritten signature in blue ink, reading "Christopher J. Blake".

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CERTIFICATE OF SERVICE

I hereby certify that on November 16, 2021, the foregoing was served via electronic mail and regular mail on the following counsel of record for the parties:

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