

EXHIBIT E

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
REQUESTS FOR PRODUCTION OF
DOCUMENTS 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, pursuant to Rules 26, 33 and 34 of the Federal Rules of Civil Procedure, hereby serves the following First Set of Requests for Production of Documents on Plaintiff Beringer Commerce, Inc., d/b/a Blue Acorn, iCi (“BCI”).

INSTRUCTIONS AND DEFINITIONS

1. A copy of the written responses and objections, if any, shall be served upon counsel for Defendants within thirty (30) days after the service of these requests.

2. Each request shall be answered separately and fully in writing, unless it is objected to, and then the reasons for the objection shall be stated. If you object to or otherwise decline to answer any portion of any request, provide all information called for by that portion of the request to which you do not object or which you do not decline to answer. If you object to any request on the basis of attorney-client privilege or work-product doctrine, then provide a

general description of the type of information or documents withheld sufficient to enable Defendants and their counsel to assess the applicability of the privilege or protection.

3. Each request is addressed to the personal knowledge of Plaintiff, as well as to the knowledge and information of Plaintiff's attorneys, investigators, agents, employees, and other representatives. When a request is directed to Plaintiff, the question is also directed to the aforementioned persons.

4. Each responsive document is to be produced in its original form (or copy where original is not available), together with any copies thereof bearing notations, memoranda, or other written information not contained on the original, and each responsive document is to be produced in its original file, jacket, folder, cover or other container, if available. An accurate copy of any document may be attached to the response of these requests in lieu of the production described in this paragraph. In the event you attached a copy of a document, identify to which request the document is responsive.

5. These requests are continuing and therefore require supplemental responses if Plaintiff obtains further responsive information in addition to or in any way inconsistent with the initial response between the time the answers are served and the time of the trial.

6. "Document" or "documents" includes, without limitation, writings, printed, graphic, recorded or electronic matter of any kind and description, including originals, non-identical copies, and drafts, and further includes without limitation graphs, charts, photographs, recordings, drawings, notes, records, electronic mail, desk calendars, appointment books, diaries, forecasts, contracts, check stubs or receipts, financial statements or reports thereof, or any oral communications and other recordings in whatever form, including information stored in any electronic medium.

7. “Identify” with respect to a document means to describe the document with sufficient particularity to withstand valid objections to such description appearing in a subpoena *duces tecum* or in a motion for the production of such document, including but not limited to the type of document (e.g., “letter”) and its date, maker, actual or intended recipients, and any persons now in possession of such document or any drafts thereof.

8. “And” and “or” shall be construed both conjunctively and disjunctively. The singular form of a word shall be interpreted as plural and the plural form of a word shall be interpreted as singular whenever appropriate to bring within the scope of any interrogatory or request for document information which might otherwise be considered beyond its scope.

9. “Person” means any individual, corporation, partnership, association sole proprietorship, joint venture, voluntary organization or any other form of business entity.

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

11. If, in answering these Requests for Production, you encounter any ambiguity in construing the meaning thereof, or a definition or instruction relevant to the inquiry contained therein, set forth the matter deemed “ambiguous” and set forth the construction chosen or used in answering the Request for Production.

12. If any Request for Production requires you to identify (or produce) any document or thing no longer in your custody or control, identify the document, state whether it is missing, lost, destroyed, transferred to others or otherwise disposed of, and identify any person who currently has custody or control of the document or who has knowledge of the contents of the document.

13. If you claim privilege as grounds for objection to any Request for Production, provide a privilege log which specifies:

- a. The nature and/or form of the information withheld (i.e. letter, memorandum, invoice, contract, etc.) and what it concerns;
- b. The date of the communication, document, or other information being withheld;
- c. The name and address of the speaker or author and all intended or actual recipients of the communication, document, or other information being withheld;
- d. The title and length of the document, if applicable; and
- e. The nature of the privilege being claimed.

14. With respect to documents and records, “produce” means to make available for inspection and copying by the undersigned counsel for Defendants, at a mutually convenient time and place, within thirty (30) days from the date of service of these requests.

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Produce a copy of each document related to the filing or registration of the Blue Acorn mark or Blue Acorn iCi mark, including but not limited to information received from the United States Patent and Trademark Office.

RESPONSE:

2. Produce a copy of each document related to the filing for registration of copyrights in the Acorn Logo (referenced in paragraphs 42-44 of the Verified Complaint), including but not limited to information received from the United States Copyright Office.

RESPONSE:

3. Produce a copy of each document supporting the allegation in paragraph 16 of the Verified Complaint that BCI “has developed a distinct, identifiable, and recognized “Blue Acorn” brand to identify its unique services.”

RESPONSE:

4. Produce a copy of each document, record, and communication supporting the allegation that BCI owns the Blue Acorn, Blue Acorn iCi, and tilted acorn trademarks as alleged, for example, in paragraphs 25-47.

RESPONSE:

5. Produce a copy of each document or communication whereby BCI has asserted (through cease and desist demand letters, legal action, or otherwise) its rights, to the Blue Acorn trademark against other companies or entities allegedly using the trademarks or likenesses.

RESPONSE:

6. Produce a copy of each document or record evidencing any licensing, permission, or agreements mentioning, concerning, or otherwise related to the use or ownership of the Blue Acorn trademarks referenced in the Verified Complaint.

RESPONSE:

7. Produce a copy of each document, record, and communication related to BCI's use and promotion of the Blue Acorn trademarks referenced in the Verified Complaint.

RESPONSE:

8. Produce a copy of any and all documents showing BCI's annual total monetary expenditures to date advertising, promoting, or offering for sale its services under the Blue Acorn trademarks referenced in the Verified Complaint.

RESPONSE:

9. Produce a copy of each communication or document exchanged between BCI and Blue Acorn PPP.

RESPONSE:

10. Produce a copy of each communication or document exchanged between BCI and any third party related to the allegations, claims, or defenses set forth in the pleadings in this Action. This Request should exclude and does not seek the production of attorney client communications unless those communications were shared with third parties.

RESPONSE:

11. Produce a copy or any statements (written, transcribed, or electronically recorded) obtained from witnesses or other persons which relate to the allegations, claims, or defenses set forth in this Action. This Request would include, but not be limited to, statements from individuals contacting BCI while allegedly trying to reach Blue Acorn PPP.

RESPONSE:

12. Produce a copy of each communication or document that relates to customers or clients of BCI stating or establishing that they procured services from Blue Acorn PPP believing it to be BCI.

RESPONSE:

13. Produce copies of all communications or correspondence between BCI and any of its customers concerning the present dispute and litigation between BCI and Blueacorn PPP.

RESPONSE:

14. Produce copies of all correspondence between third parties and employees of BCI as referenced in paragraph 92 of the Verified Complaint.

RESPONSE:

15. Produce copies of all documents you believe demonstrate or support the allegations of paragraph 103 of the Verified Complaint.

RESPONSE:

16. Produce a copy of each document or record supporting increased or new costs for BCI associated with BCI's receipt of communications and correspondence intended for Blue Acorn PPP.

RESPONSE:

17. Produce a copy of each document or record relating to or supporting the allegations in paragraphs 109 and 110 of the Verified complaint that BCI has “expended significant time and resources” addressing inquiries intended for Blue Acorn PPP or that responding to the inquiries generated “extreme” costs and “significant” business interruption.

RESPONSE:

18. Produce a copy of each document, record, or communication evidencing, concerning, or otherwise related to each and every item or category of damages you are claiming or seeking to recover in this action.

RESPONSE:

19. Produce a copy of BCI’s financial statements (including balance sheets and income statements) and state and federal income tax returns, including all schedules and forms, from 2018 to present.

RESPONSE:

20. Produce documents sufficient to show the organizational structure of BCI including specific department structure.

RESPONSE:

21. Produce documents sufficient to show the actual uses, the dates of first use, date ranges of use, and the relevant services rendered in connection with the following formats of “Blue Acorn Brand” referenced in paragraph 26 of the Verified Complaint:

- a. Blue Acorn Brand 2007-2009;
- b. Blue Acorn Brand 2009-2015;
- c. Blue Acorn Brand 2015-present; and
- d. Blue Acorn Brand (blue acorn iCi) 2019-present.

RESPONSE:

22. Produce all trademark searches and investigations in the United States conducted by or on behalf of BCI with regard to the Blue Acorn trademarks referenced in the Verified Complaint, including any documents relating to said searches that refer to the date each search was ordered, each database searched, and the person who conducted the search.

RESPONSE:

23. Produce any and all correspondence between any advertising agencies and BCI relating or referring to the actual or intended promotion of BCI’s services or the Blue Acorn trademark and any and all documents related thereto.

RESPONSE:

24. Produce copies of all business plans relating to BCI's services or its Blue Acorn trademark.

RESPONSE:

25. Produce copies of all marketing plans relating to BCI's services or its Blue Acorn trademark.

RESPONSE:

26. Produce any and all documents referring or relating to the channels of trade used by BCI to render services under the Blue Acorn trademark.

RESPONSE:

27. Produce a customer list and any and all documents evidencing, referring, or relating to the type or class of purchaser of the BCI's services.

RESPONSE:

28. Produce documents sufficient to identify all employees of BCI, their names, job titles and job duties.

RESPONSE:

29. Produce a copy of each document provided to any expert witness retained as a testifying expert in this matter.

RESPONSE:

30. Produce a copy of any documents or records referenced in the responses to the Interrogatories in this matter, or reviewed, and/or relied on in preparing or responding to the Interrogatories in this matter.

RESPONSE:

This 16th day of November, 2021.

NELSON MULLINS RILEY & SCARBOROUGH LLP



Christopher J. Blake
N.C. State Bar No. 16433
chris.blake@nelsonmullins.com
D. Martin Warf
N.C. State Bar No. 32982
martin.warf@nelsonmullins.com
4140 Parklake Avenue, Suite 200
Raleigh, North Carolina 27612
Phone: (919) 329-3800
Fax: (919) 329-3799

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

CERTIFICATE OF SERVICE

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

Thomas Babel
Beth A. Stanfield
Laura K. Greene
thomas.babel@forrestfirm.com
beth.stanfield@forrestfirm.com
katie.greene@forrestfirm.com
The Forrest Firm
105 Grace Street, Suite 101
Wilmington, NC 28401

Attorneys for Plaintiff

NELSON MULLINS RILEY & SCARBOROUGH LLP



Christopher J. Blake
N.C. State Bar No. 16433
chris.blake@nelsonmullins.com
4140 Parklake Avenue, Suite 200
Raleigh, North Carolina 27612