

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

ORDER

This cause comes before the Court on plaintiff's motion for a temporary restraining order and preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure.

Plaintiff commenced this action on June 10, 2021, by filing a verified complaint alleging claims for trademark infringement, copyright infringement, cybersquatting, and unfair and deceptive trade practices. Plaintiff does business as Blue Acorn iCi and owns the registered trademark BLUE ACORN ICI, copyright of the "blue acorn" logo and artwork, and all associated intellectual property rights relating to plaintiff's "blue acorn" brand. Plaintiff alleges that defendants are operating an infringing "blue acorn" business by using unregistered logos, marks, and images that are nearly identical or confusingly similar to plaintiff's "blue acorn" intellectual property. Plaintiff further alleges that in March 2021 defendants flooded the market with their infringing "blue acorn" mark in similar channels of commerce as plaintiff's goods and services which has caused significant actual consumer confusion. Plaintiff alleges that it has recently been

inundated with complaints related to defendants' business based upon consumers' mistaken belief that plaintiff is or is associated with defendants' business. Plaintiff contends that due to the nature of the complaints and defendants' failure to provide any customer service or method by which to address its customer complaints defendants are damaging the goodwill and value associated with plaintiff's "blue acorn" brand.

Plaintiff, by its motion and verified complaint, and the exhibits attached thereto, has demonstrated that temporary injunctive relief is warranted. 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.

Plaintiff has further demonstrated that *ex parte* relief is warranted. It has demonstrated that immediate and irreparable injury, loss, or damage will result before the defendants can be heard in opposition in light of the ongoing damage to plaintiff's reputation caused by the actual confusion experienced by defendants' consumers. Plaintiff has also shown that notice should not be required as plaintiff has recently sent two cease and desist letters to defendants who have continued in their alleged unauthorized use of infringing logos, marks, and images. Although counsel for one defendant contacted plaintiff's counsel following receipt of the second cease and desist letter, plaintiff alleges that "defendants were unwilling to cease infringing activity and offered no alternative solution to address the ongoing confusion and damages to plaintiff." [DE 1 ¶ 122].

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.

This temporary restraining order shall remain in effect for fourteen days from the date of entry of this order. A hearing on plaintiff's request for a preliminary injunction is set for June 25, 2021, at 11:00 a.m./~~p.m.~~ at U.S. District Court Savannah City, North Carolina.

Plaintiff is hereby ORDERED to provide a security in the amount of \$1,000.00 to pay the costs and damages of any party found to have been wrongfully enjoined or restrained.

Plaintiff, through its counsel, is further ORDERED to serve a copy of this order on all defendants, including their respective counsel if known, and file proof of service of the same prior to the hearing on the motion for preliminary injunction.

SO ORDERED, this 11 day of June, 2021, at 3:00 p.m.

Terrence W. Boyle
TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE