

DISTRICT COURT, CITY & COUNTY OF DENVER,
STATE OF COLORADO
Court Address: 1437 Bannock Street
Denver, CO 80209
Clerk of Division 9: (720) 865-8612

Plaintiff: Lion Capital, L.L.C., a Colorado Limited Liability Company
v.

Defendants: Avatar Industries, Inc., d/b/a Thrivex.Com; et alia, and Including: MBA Financial Group, Inc. misnamed in Plaintiff's caption as "MBA Financial Group, d/b/a MBA Financial.Com," and Dale Finney, individually.

Attorney for Defendants MBA Financial Group, Inc., and Dale Finney, individually:
Timothy J. Essling, Esq.
50 So. Steele Street, #850
Denver, CO 80209
Phone: (303) 331-0055 Fax: (303) 331-0492
Atty. Reg. #: 12785

Attorney for Plaintiff Lion Capital, L.L.C.:
Andrew L. Quiat, Esq.
8200 So. Quebec Street, Suite A-3185
Englewood, CO 80112
Phone: (303) 471-8558 Fax: (303) 471-8561

▲ COURT USE ONLY ▲

Case Number:
03 CV 5863

Div.: 9

**DEFENDANTS MBA and FINNEY'S FIRST SET OF INTERROGATORIES,
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS, and
FIRST REQUEST FOR ADMISSIONS**

COME NOW DEFENDANTS MBA FINANCIAL GROUP, INC. (hereinafter, "MBA") and DALE FINNEY, by counsel, and hereby request that the President or Chief Executive Officer of Plaintiff, Lion Capital, L.L.C., pursuant to Rules 33, 34 and 36 of the Federal Rules of Civil Procedure, and Rules 16(a)(1), 26, and 33(e) of the Colorado Rules of Civil Procedure, Answer the Interrogatories set forth herein, within 30 days, Produce the documents designated below for inspection and copying, within 30 days, and Respond to these Requests for Admissions within thirty (30) days after service of these Interrogatories, Requests for Production and Requests for Admissions.

These Interrogatories, Requests for Production and Requests for Admissions are deemed to be continuing to the full extent permissible pursuant to Rule 26(e) of the Federal Rules of Civil Procedure. Supplemental or amended responses should be furnished within ten (10) days of the date on which any additional information is obtained.

INSTRUCTIONS

1. Each answer must be as complete and straightforward as the information reasonably available to you, as the President or Chief Executive Officer of Plaintiff, or anyone acting on your behalf, permits. “YOU, OR ANYONE ACTING ON YOUR BEHALF” includes you, your agents, your employees, your insurance companies, their agents, their employees, your attorneys, your accountants, your consultants and expert witnesses, your investigators, and anyone else acting on your behalf.
2. If an Interrogatory cannot be answered completely, answer it to the extent possible. If you do not have enough personal knowledge to fully answer an Interrogatory, say so, but make a reasonable and good faith effort to get the information by asking other persons or organizations. Fully disclose any third party sources of information and assistance, in response to Interrogatory #1, hereinbelow.
3. Whenever an Interrogatory may be answered by referring to a document (such as business records), the document(s) may be attached as an exhibit to the response and referred to in the response. If the document has more than one page, refer to the page and section where the answer to the Interrogatory can be found.
4. In the event that the President or Chief Executive Officer of Plaintiff objects to answering any of the Interrogatories, producing any of the documents requested or responding to any of the Requests for Admissions, Plaintiff should state the precise ground(s) for each objection and the basis for asserting that such ground is applicable. Such statement should be made separately for each Interrogatory, Request for Production and Request for Admission with respect to which Plaintiff asserts an objection. Communications which, on the ground of some objection, are not produced, should be identified as follows:
 - A. State the full name and the present residential address of the person or persons by whom the document was written or communications were made;
 - B. State, with respect to each of the persons identified pursuant to (A) above: (1) at present, his employer, title, substantive responsibilities, business address, immediate supervisor and the designation of the office or department in which the person is employed, and (2) at the time the document was written or communication was made, his employer, title, substantive responsibilities, immediate supervisor and the designation of the office or department in which the person was employed;
 - C. State the date of the document or the date and place of the communication; State, with respect to a document, the title or caption of the document and its nature (e.g., letter / memorandum / corporate resolution / etc.);

D. State, with respect to a document, the present location of the document, and the name and address of the person in whose custody or control the document is currently held;

E. Provide a brief description of the substance or subject matter of the document or communication (without waiving an alleged privilege);

F. State the full name and the present residential and business address of each person to receive the document or a copy thereof or to whom a communication was made or further disseminated; and

G. State, with respect to each person identified pursuant to (F) above, the information requested in (B)(1) and (2) above.

5. If any information or document responsive to any of the following Interrogatories, Requests for Production, or Request for Admissions is withheld under a claim of privilege, describe or identify:

A. The subject matter of any information or communication withheld, and

B. The format (medium) and date of such communication, and

C. All Parties to such communication, or others who may have records of same, and

D. The precise nature of any privilege under which it is withheld, and

E. The Party(ies) asserting the privilege, and

F. The Party / Attorney / custodian / other person bound by the privilege.

6. If Plaintiff exercises the option under F.R.C.P. 33(d) to produce business records in lieu of responding to any Interrogatory, the following procedure is to be employed:

A. In response to such Interrogatory, please identify and attach the records containing the information;

B. In producing such record(s), Plaintiff shall produce such record(s) separately and designate the Interrogatory to which such record(s) corresponds.

7. MBA requests that the documents specified below in their Request for Production of Documents be produced at the office of its counsel, Timothy J. Essling, 50 So. Steele St., Suite 850, Denver, Colorado 80209, within thirty (30) days from service of these Interrogatories, Request for Production of Documents, and Request for Admissions, and on successive dates thereafter until counsel's inspection and copying has been completed. If any or all documents identified herein are no longer in Plaintiff's possession, custody, or control because of destruction, loss, or any other reason, then do the following with respect to each and every such document;

A. Describe the nature of the document (e.g., letter or memorandum);

B. State the date of the document;

C. Identify the person who sent and received the original and any copies of the documents;

D. State in as much detail as possible, the contents of the document; and

E. State the manner and disposition of the document identifying, if possible, the current location of the document and the person or persons in whose custody or control the document may be found.

8. For each **REQUEST FOR ADMISSION**, please ADMIT or DENY such request. For each DENIAL of such REQUEST, please specify each and every basis for such DENIAL, and fully disclose and explain such facts as support such DENIAL.

DEFINITIONS

1. “Document” means any medium upon which intelligence or information can be recorded or retrieved, and includes, without limitation, regardless of origin and location, any book, pamphlet, periodical, letter, memorandum (including any memorandum or report of a meeting or conversation), invoice, bill, order form, receipt, financial statement, accounting entry, diary, calendar, telex, telegram, cable, report, record, contract, agreement, study, handwritten note, draft, working paper, chart, paper, print, laboratory record, drawing, sketch, graph, index, list, tape, photograph, microfilm, data sheet or data processing card, or any other written, recorded, transcribed, punched, taped, filmed or graphic matter, However produced or reproduced, which is in your possession, custody or control, or which was, but is no longer, in your possession, custody or control.

2. “Person” means any individual or entity, including, but not limited to, partnership(s), association(s), corporation(s), principal, agent, or other.

3. “Identify” when used with reference to a natural person, means to state each of the following:

- A. The person’s full name;
- B. The person’s present residential address; and
- C. His present employer, title, substantive responsibilities, business address, his immediate supervisor, and the designation of the office or department in which the person is employed.

4. “Identify” when used with reference to an entity other than a natural person, means to state each of the following:

- A. The full name of the entity and any names under which it does business;
- B. The present or last known address of the entity’s principal office or place of business;
- C. The type of entity (e.g., corporation, partnership);
- D. All officers / agents / employees (if less than ten) of such entity,
- E. All phone numbers for the entity; and
- F. All fax numbers for the entity.

5. “Identify” when used in reference to an oral communication, including meetings, conferences, discussions, conversations, advice, counsel, speeches, addresses, and remarks, means to state each of the following:

- A. The full name and residential and business address of the person making such

- oral communication;
 - B. The full name and residential and business address of each person to whom such oral communication was made;
 - C. If the oral communication was made to the members of a large class, in which case it shall be sufficient to describe the class;
 - D. The date and place at which such oral communication was made;
 - E. The substance of the oral communication; and
 - G. The source of Plaintiff's information about the communication.
 - H. In addition, identify each document that was recorded, summarized or referred to in the oral communication.
6. "Identify" when used in reference to a document, means to state each of the following:
- A. The nature of the document (e.g., letter of memorandum);
 - B. Its title or caption;
 - C. Its date;
 - C. The name, title, and employer of each author of the document at the time the document was written;
 - E.. At the time the document was written, the name, title, and employer of each person to receive the document, or to whom a copy thereof was distributed;
 - F. The present location of the document; and
 - G. The name and address of the person in whose custody or control the document is currently held.

INTERROGATORIES

INTERROGATORY #1: State the name, address, telephone number, and relationship to Plaintiff of each person who prepared or assisted in the preparation of the responses to these interrogatories. See INSTRUCTION #1, above. (Do not identify anyone who simply typed or reproduced the responses.)

INTERROGATORY #2: Please fully identify all officers, directors and employees of Plaintiff. For each officer director and employee, state his or her job description, and any other employment held by each person during the five years preceding the date, hereof.

INTERROGATORY #3: Fully identify all owners or shareholders of the Plaintiff, including the nature and extent of their share hold or other equitable or legal interest, and their respective employment(s) during the last five years.

INTERROGATORY #4: Describe the nature and extent of the Plaintiff's business activities, including all business functions or activities and the number of employees employed by the Plaintiff at each location of the Plaintiff's business operations.

INTERROGATORY #5: Describe all litigation to which the Plaintiff has ever been a party, including but not limited to, all TCPA actions ever brought by the Plaintiff for itself or as an assignee. Such description should include the case name, the court where filed (identify the court by level, location, and state), the case or action number, identification of all Plaintiffs and Defendants, identification of respective counsel, a description of the nature of that litigation and the issues involved therein, and the current status or final result/outcome of such litigation.

INTERROGATORY #6: Identify every person / individual who is or ever was an employee, agent, consultant, expert witness, or representative of the Plaintiff who has ever testified in any of the litigation described in your answer to Interrogatory #5 above, including the case, the date of the testimony, and the nature of the testimony, context of such testimony (trial, hearing or deposition), and the subject matter of that testimony.

INTERROGATORY #7: For each assignment of each assignor at issue in this case (see your **COMPLAINT**), fully identify each person / individual acting for or on behalf of each assignor with whom the Plaintiff and its representatives had any contact or dealings whatsoever.

INTERROGATORY #8: For each assignment of each assignor at issue in this case (see your **COMPLAINT**), fully identify each and every representative, employee, or agent of the Plaintiff who has engaged in any dealings or communications with that assignor.

INTERROGATORY #9: For each assignment of each assignor at issue in this case (see your **COMPLAINT**), describe all communications (whether written, verbal or electronic) between any and all representatives of the Plaintiff and any and all representatives of the assignor prior to the time that the assignment was executed and delivered, including the identification of all persons involved in those communications.

INTERROGATORY #10: For each assignment of each assignor at issue in this case (see your **COMPLAINT**), describe all communications (whether written, verbal or electronic) between any and all representatives of the Plaintiff and any and all representatives of the assignor at any time at or after the execution of the assignment, including the identification of all persons involved in those communications.

INTERROGATORY #11: For each assignment by each assignor at issue in this case (see your **COMPLAINT**), specifically state:

- A) Identify all persons who may benefit financially from each assignment of a fax transmittal.
- B) Identify all person(s) making such assignment. If the person making the assignment is an entity, please identify the entity making the assignment and the natural person whose signature appears on the assignment, and the basis of their authority to make such assignment. For each such assignor of a facsimile transmittal, please identify all corporate officers and stockholders.

- C) Any and all consideration given, promised, or exchanged for the assignment.
- D) Identify the person you allege received the unsolicited facsimile transmittal. If the person is an entity, please identify the entity and the natural person who removed the facsimile transmittal from the fax machine.
- E) Identify the phone number of the facsimile machine that received the facsimile transmittal, and identify the customer who is billed for such phone service.
- F) Identify the person who owns the facsimile machine that received the facsimile transmittal including the make, model and year of the facsimile machine.
- G) Specify date that Assignor alleges the unsolicited facsimile transmittal was received.
- H) Identify the person at whose instruction or request such facsimile(s) were retained, and the purpose for such retention.

INTERROGATORY #12: For each facsimile transmission which is the basis of Plaintiff's claim, please identify any and all persons who, within a time frame of 120 days prior to the transmittal of the facsimile which is the basis of Plaintiff's claim, had access to inbound or outbound facsimile traffic from the subject fax machine. This question is meant to obtain a complete disclosure of all persons with access, whether employees, officers, contractors, visitors, family members, or other casual / occasional users of the fax facilities.

INTERROGATORY #13: For each facsimile transmission which is the basis of Plaintiff's claim, please identify and itemize each and every element and item of actual damages incurred, or "detriment" suffered by Plaintiff's Assignors as alleged in rhetorical paragraphs #3.1, #3.2, #20.4, #20.5, and #20.11 of the Complaint.

INTERROGATORY #14: For each facsimile transmission which is the basis of Plaintiff's claim, please set forth each and every basis for Plaintiff to claim, as asserted in rhetorical paragraph #20.7, that Defendants have violated the TCPA "in a knowing and willful manner."

INTERROGATORY #15: For each facsimile transmission which is the basis of Plaintiff's claim, please set forth each and every basis for Plaintiff to claim, as asserted in rhetorical paragraph #20.12, that "Pursuant to both the TCPA and the Colorado Consumer Protection Act, Plaintiff is entitled to an injunction ..." Please identify with particularity the precise statutory language upon which Plaintiff relies, any state or federal regulation which so provides for a third party to obtain injunctive relief under the TCPA on behalf of a non-party, or any case law which establishes any arguable right in such party as assignee / Plaintiff, herein.

INTERROGATORY #16: For each facsimile transmission which is the basis of Plaintiff's claim, please set forth each and every basis for Plaintiff to claim, as asserted in rhetorical paragraphs #4.1, #4.2, #5.1, #5.2, #6.1, #6.2, #7.1, #7.2, #8.1, #8.2, #9.1, #9.2, #10.1, #10.2, #11.1, #11.2, #12.1, #12.2, #13.1, #13.2, #14.1, #14.2, #15.1, #15.2, #16.1, #16.2, #17.1, #17.2, #18.1, #18.2, #19.1, and #19.2, that such facsimiles "...were sent without Plaintiff's Assignor's prior express permission, consent or invitation." Please identify each individual of whom

inquiry was made, the date, and response of each person responding, and their basis to believe that no consent, permission, or invitation was tendered by another person, who has or had access to such facsimile machine during the time period germane to such consent.

INTERROGATORY #17: For each facsimile transmission which is the basis of Plaintiff's claim, please set forth each and every basis for Plaintiff to claim, as asserted in rhetorical paragraphs #4.3, #6.3, #7.3, #8.3, #9.3, #10.3, #11.3, #12.3, #13.3, #14.3, #15.3, #16.3, #17.3, #18.3, #19.3, that such facsimiles were sent "without having clearly marked in a margin at the top or bottom of each transmitted page of the message or on the first page of the transmission, the date and time each was sent and an identification of the business ... sending the message, and the telephone number of the sending machine..." [Defendants seek to examine the originals of all such exhibits, pursuant to the **REQUEST FOR THE PRODUCTION OF DOCUMENTS**, hereinbelow.]

INTERROGATORY #18: Please set forth each and every basis, for each Exhibit of Plaintiff's **COMPLAINT**, for Plaintiff to claim, as asserted in rhetorical paragraph #20.8, and item 1 of Plaintiff's Prayer for Relief, that Defendants have violated the Colorado Consumer Protection Act C.R.S. 6-1-702 (hereinafter, "C.C.P.A."), or engaged in "Deceptive Trade Practices" thereunder.

INTERROGATORY #19: Please fully identify each proponent of all facsimile transmissions in the possession and control of Plaintiff, and detail any settlement arrived at between Plaintiff and each such proponent, regarding such document(s). Please include the date, the amount and terms of any settlement, the RELEASE or other document which relates to such agreement, and the disbursement, or reason for non-disbursement, to the assignor of such Exhibit.

INTERROGATORY #20: Please set forth each and every basis for Plaintiff to claim, as asserted in rhetorical paragraphs #9.4 of Plaintiff's **COMPLAINT**, that:

- A) Individual Defendant Finney has "...conducted business with inadequate or thin capitalization for the business in which he is or has been engaged."
- B) Individual Defendant Finney has "... used the business for an illegal or fraudulent purpose."
- C) Individual Defendant Finney should be held personally liable for all damages under any and all counts of the **COMPLAINT**
- D) The corporate veil of MBA Financial Group, Inc. should be pierced or disregarded.

INTERROGATORY #21: Please set forth each and every basis for Plaintiff to claim, as asserted in rhetorical paragraphs #10.5 of Plaintiff's **COMPLAINT**, that:

- A) Individual Defendant Lunsford has "...conducted business with inadequate or thin capitalization for the business in which he is or has been engaged."
- B) Individual Defendant Lunsford has "... used the business for an illegal or fraudulent purpose."

- C) Individual Defendant Lunsford should be held personally liable for all damages under any and all counts of the **COMPLAINT**
- D) The corporate veil of Nutri-Pro Labs, Inc. should be pierced or disregarded.

INTERROGATORY #22: Please set forth each and every basis for Plaintiff to claim, as asserted in rhetorical paragraphs #19.4 of Plaintiff's **COMPLAINT**, that:

- A) Individual Defendant Sitkowski has "...conducted business with inadequate or thin capitalization for the business in which he is or has been engaged."
- B) Individual Defendant Sitkowski has "... used the business for an illegal or fraudulent purpose."
- C) Individual Defendant Sitkowski should be held personally liable for all damages under any and all counts of the **COMPLAINT**
- D) The corporate veil of Financial Success System, Inc. should be pierced or disregarded.

INTERROGATORY #23: Do you understand that under the Colorado Rules of Civil Procedure, Rule 33, you have the legal obligation in your answers to these interrogatories to furnish all information which is available from any of Plaintiff's records and from any of Plaintiff's employees or agents?

INTERROGATORY #24: In answering these interrogatories, has your signing representative made a full inquiry of any and all employees, and examined all of Plaintiff's records, necessary to respond fully and accurately to the questions asked in these interrogatories?

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 1: Please produce, for Defendant MBA's inspection, all documents Plaintiff relied upon in preparing responses to these Interrogatories. Defendant specifically subsumes within this request each original facsimile transmittal received by assignors, upon which Plaintiff's claim relies.

REQUEST FOR PRODUCTION NO. 2: For each assignor of each Exhibit, herein, please produce any and all executed assignments of rights, title and interests in facsimile transmission(s) made by your assignor, and any explanatory materials related to same, and fee agreement, and WAIVER OF CONFLICT OF INTEREST, and RELEASE, and other related documents.

REQUEST FOR PRODUCTION NO. 3: For each assignor, please produce any and all documents/correspondence sent by Plaintiff to the assignor including but not limited to letters, contracts, agreements, copies of cancelled checks and communications regarding payment for facsimiles assigned to Plaintiff.

REQUEST FOR PRODUCTION NO. 4: For each assignor, please produce any and all documents/correspondence sent by the assignor to Plaintiff, including but not limited to letters,

contracts, agreements, copies of cancelled checks and communications regarding payment for facsimiles assigned to Plaintiff.

REQUEST FOR PRODUCTION NO. 5: For each Exhibit which is a basis for Plaintiff's claim, please produce the phone bill corresponding to the fax phone line on which the facsimile transmittal was received, for the billing period during which each Exhibit was received.

REQUEST FOR PRODUCTION NO. 6: Please produce Plaintiff's most recent phone bill(s) including all voice, fax and data lines.

REQUEST FOR PRODUCTION NO. 7: Please produce all of Plaintiff's advertising copy / artwork, promotional literature, stock prospectus, marketing and / or business plan(s), enterprise liability insurance policy(ies), training materials, employee handbooks / employee manuals, for the calendar years 2002, 2003, and 2004.

REQUEST FOR PRODUCTION NO. 8: Please produce copies of any written requests of any of Plaintiff's assignors for the removal of their respective facsimile numbers from Defendant MBA's database, or phone logs of such requests, or complaints concerning any failure of such removal, or any other evidence of Assignor's compliance with the terms of the C.C.P.A., which support such claim(s).

REQUEST FOR PRODUCTION NO. 9: Please produce copies of all documents containing or constituting an authorization, approval, consent or permission that Plaintiff has ever obtained or received from any person or entity for facsimile communications.

REQUEST FOR ADMISSIONS

REQUEST FOR ADMISSION #1: Admit that each and every original of Plaintiff's Exhibits contains a header which correctly reflects the date and time of transmission, the source number, and the destination number, and that the proponent of the facsimile is clearly identified in large print on the first (and only) page of each Exhibit.

REQUEST FOR ADMISSION #2: Admit that each and every original of Plaintiff's Exhibits contains a "footer" which correctly reflects the functional, toll-free "removal number" in legible print on the first (and only) page of each Exhibit.

REQUEST FOR ADMISSION #3: Admit that each and every original of Plaintiff's Exhibits bears the source number of the transmittal, the date and time of transmission, identifies the sender (or proponent), and provides the removal number. In other words, ADMIT that each and every original facsimile fully complies with the Colorado Consumer Protection Act, C.R.S. 6-1-702 *et seq.*

REQUEST FOR ADMISSION #4: Admit that the Plaintiff's claim for recovery under the TCPA, herein, seeks to enforce a statutory penalty.

REQUEST FOR ADMISSION #5: Admit that Plaintiff has knowledge of the pattern of tactics of E-loansites.com, Inc. and Fax.com, Inc. in marketing and misrepresenting their purported affiliation with the National Center For Missing & Exploited Children, and that each Defendant, herein, acted in reliance upon the purported "charitable exemption" or the consent of each fax recipient.

REQUEST FOR ADMISSION #6: Admit that Plaintiff knows that MBA, herein, and many other TCPA Defendants, were misled by E-loansites.com and Fax.com, Inc., concerning the purported consent(s) of the fax recipients to receive any facsimiles related to the National Center For Missing & Exploited Children.

REQUEST FOR ADMISSION #7: Admit that Plaintiff knows that MBA, herein, and many other TCPA Defendants, were misled by E-loansites.com and / or Fax.com, Inc., concerning the purported "charitable exemption" from the statutory prohibitions of the TCPA.

REQUEST FOR ADMISSION #8: Admit that Plaintiff knows that MBA, herein, engaged in the dissemination of the subject facsimiles, herein, to support a public service endeavor (Emergency Notification Network of The National Center For Missing & Exploited Children), and did not intend to "knowingly or willfully" transmit facsimiles to unconsenting recipients, or otherwise seek or intend to violate any state or federal statute or regulation.

REQUEST FOR ADMISSION #9: Admit that Plaintiff's Exhibit #8 does not contain any material specifically "...advertising the commercial availability or quality of any property, goods, or services..." but is informational in nature.

REQUEST FOR ADMISSION #10: Admit that Plaintiff has no standing to seek injunctive relief on behalf of non-parties to this litigation, and no basis to demonstrate any need for injunctive relief on its own behalf. If you DENY this REQUEST, please set forth the basis for such denial.

REQUEST FOR ADMISSION #11: Admit that Plaintiff has no basis to believe that MBA is now transmitting any facsimiles in arguable violation of the TCPA, the CCPA, or any state or federal law, which transmittals would provide any grounds for injunctive relief.

Respectfully submitted,

Timothy J. Essling, Attorney for MBA

CERTIFICATE OF SERVICE:

I hereby certify that on this 2nd day of September, 2004, a true and complete copy of the foregoing **Defendant's First Set of Interrogatories, Requests for Production of Documents and Requests for Admission** was electronically filed through Courtlink, and forwarded to:

Andrew L. Quiat, Esq.
8200 So. Quebec St., Suite A-3185
Englewood, CO 80112

Mark C. Briggs, President
Distinctive Threads, Inc.
617 Ord Drive
Boulder, CO 80303

James C. Recht, Esq.
Elkins Combs & Recht, L.L.C.
107 Wilcox St., Suite 200
Castle Rock, CO 80104

Patrick L. Ridley, Esq.
Richilano & Ridley, P.C.
1800 15th St., Suite 101
Denver, CO 80202

DATED this 2nd day of September, 2004.

Timothy J. Essling, Attorney for Defendants
MBA Financial Group, Inc. and
Dale Finney