

1 **COMP**
2 **COGBURN LAW OFFICES**
3 JAMIE S. COGBURN, ESQ.
4 Nevada State Bar No. 008409
5 170 S. Green Valley Pkwy., Suite 280
6 Henderson, Nevada 89012
7 (702) 384-3616
8 Attorneys for Plaintiff

FILED
JUL 18 11 51 AM '07

CR
DISTRICT COURT OF THE COURT

CLARK COUNTY, NEVADA

9 XYIENCE INCORPORATED, a Nevada
10 Corporation,

11 Plaintiff,

12 v.

13 RICHARD BERGERON, an Individual,

14 Defendant.

Case No:
Dept. No.:

A544781

XVI

COMPLAINT

15 Plaintiff, Xyience Incorporated, a Nevada Corporation, (hereinafter referred to as
16 "Plaintiff"), by and through their attorneys, Cogburn Law Offices, hereby alleges as follows:

17 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

18 1. That at all relevant times, Plaintiff was a Nevada Corporation authorized to do
19 business in the State of Nevada.

20 2. That at all relevant times, Defendant, Richard Bergeron (hereinafter referred to as
21 "Bergeron"), was an individual residing in Massachusetts.

22 3. The true names and capacities whether individual, corporate, associate or
23 otherwise of Defendants named herein as DOES I through X, inclusive, and ROE
24 CORPORATIONS I through X, inclusive are unknown to Plaintiff. Said DOE and ROE
25 Defendants are responsible for damages suffered by Plaintiff. Therefore, Plaintiff sues said
26 Defendants by such fictitious names. Plaintiff will ask leave to amend this Complaint to show
27
28

1 the true names and capacities of each DOE and ROE Defendants at such time as the same has
2 been ascertained.

3 4. In December of 2006, Bergeron began writing false and misleading articles about
4 Plaintiff.

5 5. On December 10, 2006, Bergeron posted an article on his Myspace.com webpage,
6 wherein he alleged that Xyience is being investigated by the Securities and Exchange
7 Commission and that a Class Action law suit against Xyience was underway. Both of these
8 statements were false.

9 6. This article also alleged that Xyience had created "shell corporations" to divert
10 investor funds for the benefits of certain directors and board members. This allegation was false.

11 7. Soon after this article was posted on Myspace.com, Bergeron's Myspace account
12 was deleted because of the defamatory and slanderous statements. Thereafter, Bergeron started
13 his own website, UnlimitedFightNews.com, wherein Bergeron continued to post defamatory
14 articles and comments.

15 8. On or about March 17, 2007, Bergeron posted a new article laced with false
16 statements entitled "Xyience Investigative Report: Creator Russell Pike's Criminal Tendencies
17 Revealed."

18 9. Bergeron alleges that Xyience was created to steal money from investors for the
19 benefit of certain employees or directors, which is false.

20 10. Bergeron also alleges that a major shareholder, Russell Pike, is using Xyience to
21 defraud investors. Bergeron goes on to make up quotes from Russell Pike's former attorney,
22 David Winterton, that Xyience is just another company to defraud investors.

1 11. Bergeron also alleges that the President of the Ultimate Fighting Championship
2 (hereinafter referred to as "UFC"), Dana White is involved in defrauding investors by splitting
3 sponsorship fees that Xyience paid the UFC. This allegation was also false.

4 12. Bergeron goes on to claim that Xyience is skimming money from investors and
5 splitting it with the UFC, which is utterly false.

6 13. Bergeron continues to post defamatory articles containing false allegations about
7 Xyience.

8 14. Bergeron's articles allow people to post comments about the articles, however, if
9 a positive statement about Xyience is posted, then Bergeron immediately takes it down.

10
11 **FIRST CAUSE OF ACTION**
12 **(Defamation)**

13 15. Plaintiff realleges and reimcorporates by reference each and every prior allegation
14 contained above.

15 16. On or about December 10, 2006, Bergeron posted an article on his Myspace.com
16 webpage, wherein he made the following false and defamatory statements concerning Plaintiff.

- 17 a. Xyience is being investigated by the Securities and Exchange Commission
18 (hereinafter referred to as the "SEC").
19
20 b. A Class Action law suit against Xyience was underway.

21 17. These allegations were false and defamatory per se as there is no factual basis for
22 these assertions and it communicates to the public that Xyience is being investigated by the SEC
23 for securities violations and there is litigation underway concerning these violations.

24 18. On or about March 17, 2007, Bergeron posted another article with the following
25 false and defamatory statements concerning Plaintiff.

- 26 a. Xyience was created to steal money from investors for the benefit of certain
27 employees or directors.
28

- 1 b. Shareholder, Russell Pike, is using Xyience to defraud investors.
- 2 c. Bergeron makes up quotes from Russell Pike's former attorney, David
- 3 Winterton, that Xyience is just another company to defraud investors.
- 4
- 5 d. President of the UFC, Dana White is involved in defrauding investors by
- 6 splitting sponsorship fees that Xyience paid the UFC.
- 7 e. Xyience is skimming money from investors and splitting it with the UFC.

8 19. These allegations were false and defamatory per se as there is no factual basis for

9 these assertions and it communicates to the public that Xyience is defrauding investors and is

10 conspiring with the UFC to defraud investors.

11 20. Xyience has sent several emails and letters to Bergeron requesting retraction of

12 the aforementioned articles.

13 21. Bergeron continues to post articles and blogs on a weekly basis containing

14 defamatory statements with the intent to destroy the reputation of Xyience.

15 22. Plaintiff is informed and believes, and thereupon alleges that each of the

16 defamatory statements complained to herein remains on defendant's website, is accessible by the

17 general public on a daily basis and continues to cause reputational injury to plaintiff.

18 23. The foregoing statements subject Plaintiff to ridicule and obloquy, and cause them

19 to be shunned in their community and in the larger business community in which they operate.

20 Said statements further damage Plaintiff by causing the current value of Xyience shares to

21 depreciate in value and deters people from investing in Xyience.

22 24. Plaintiff is informed and believes and thereupon alleges that Bergeron made the

23 above-referenced statements knowing they were false and knew he had no reasonable basis and

24 fact to make such statements.

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

25. Plaintiff is informed and believes and thereupon alleges that, at the time Bergeron wrote the above referenced defamatory statements, he know that he had no reliable or unbiased evidence or information that supports said statements.

26. Plaintiff is further informed and believes and thereupon alleges that, prior to publication, Bergeron failed to use reasonable care to determine the truth or falsity of said statements.

27. Plaintiff is further informed and believes and thereupon alleges, that at the time of publication, Defendant, acted with ill will toward Plaintiff herein in that he knew that his false statements would injure Plaintiff's business and/or reputation.

28. The statements that are subject of this action were published in the County of Clark, and throughout the country. The foregoing defamatory statements were seen and read by persons who reside in the county of Clark, State of Nevada. Defendant knew and/or had reason to know that the defamatory statements described herein would be seen and read by people who reside in Clark County, State of Nevada.

29. As a direct and proximate result of Defendant's publication of the defamatory statements alleged above, Plaintiff has suffered damage to its business reputation, all to its general damage in the amount of \$25,000,000.00.

30. As a direct and proximate result of Defendant's publication of said defamatory statements, Plaintiff has suffered special damages in an amount to be determined at trial.

31. Plaintiff is informed and believes, and on that basis alleges, that the conduct of Defendant was intentional, and done willfully and maliciously toward Plaintiff, and with conscious disregard for the rights of Plaintiff. Plaintiff's injuries were intensified by the malicious conduct of Defendant and thereby justifies an award of exemplary and punitive damages.

1 32. As an additional direct, foreseeable and proximate result of Defendant's conduct,
2 Plaintiff has found it necessary to retain the legal services of Cogburn Law Offices, to prosecute
3 this action and is entitled to reasonable attorneys fees therefore.
4

SECOND CAUSE OF ACTION
(Tortuous Interference With Prospective Economic Advantage)

5
6 33. Plaintiff realleges and reincorporates by reference each and every prior allegation
7 contained above.

8 34. Plaintiff is informed and believes and thereupon alleges that, Defendant knew
9 these defamatory statements would deter potential investors from investing in Xyience.
10

11 35. Plaintiff is informed and believes and thereupon alleges that, Defendant was
12 aware of Xyience's prospective economic relationship with outside investors. Despite that
13 knowledge, Defendant intentionally, willfully, wantonly, knowingly and with reckless disregard
14 of the resulting harm to Xyience posted defamatory articles about SEC violations and fraudulent
15 activity at Xyience.

16 36. As a direct, foreseeable and proximate result of defendants' conduct, the outside
17 investor decided not to invest any funds in Xyience.
18

19 37. Defendant does not have, and never had, a justification for interfering or privilege
20 to interfere with Xyience's contractual or prospective economic relationship with outside
21 investors.

22 38. Moreover, Defendant intended or was substantially certain that his conduct would
23 cause the outside investor not to invest in Xyience.

24 39. As a direct and proximate result of Defendant's tortuous interference, Xyience
25 was damaged in an amount in excess of Ten Thousand Dollars (\$10,000.00).
26
27
28

1 40. As an additional direct, foreseeable and proximate result of Defendant's conduct,
2 Plaintiff has found it necessary to retain the legal services of Cogburn Law Offices, to prosecute
3 this action and is entitled to reasonable attorneys fees therefore.
4

5 **THIRD CAUSE OF ACTION**
6 **(Intentional Interference with Contract)**

7 41. Plaintiff realleges and reimcorporates by reference each and every prior allegation
8 contained above.

9 42. Plaintiff is informed and believes and thereupon alleges that, Defendant knew
10 these defamatory statements would deter potential investors from investing in Xyience.

11 43. Plaintiff is informed and believes and thereupon alleges that, Defendant was
12 aware of Xyience's pending deals with outside investors. Despite that knowledge, Defendant
13 intentionally, willfully, wantonly, knowingly and with reckless disregard of the resulting harm to
14 Xyience posted defamatory articles about SEC violations and fraudulent activity at Xyience.

15 44. As a direct, foreseeable and proximate result of defendants' conduct, the outside
16 investors decided not to invest any funds in Xyience.

17 45. Defendant does not have, and never had, a justification for interfering or privilege
18 to interfere with Xyience's contractual relationships with outside investors.

19 46. Moreover, Defendant intended or was substantially certain that his conduct would
20 cause the outside investor not to invest in Xyience.
21

22 47. As a direct and proximate result of Defendant's tortuous interference, Xyience
23 was damaged in an amount in excess of Ten Thousand Dollars (\$10,000.00).


24 48. As an additional direct, foreseeable and proximate result of Defendant's conduct,
25 Plaintiff has found it necessary to retain the legal services of Cogburn Law Offices, to prosecute
26 this action and is entitled to reasonable attorneys fees therefore.
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

WHEREFORE, the Plaintiff respectfully requests Judgment as follows:

1. For damages in favor of Plaintiff and against the Defendant in a sum in excess of \$10,000, plus interest therein in an amount to be determined at the time of trial;
2. For punitive damages in a sum to be determined at trial;
3. For interest at the legal rate;
4. For attorney's fees as special damages in a sum to be determined at trial; and
5. For such and further relief as the Court may deem just and proper in the premises.

COGBURN LAW OFFICES

By 

Jamie S. Cogburn, Esq.
Nevada State Bar No. 008409
170 S. Green Valley Pkwy., Suite 280
Henderson, Nevada 89012
Attorneys for Plaintiff