

CAUSE NO. 05-11461

ADVANTAGE CONFERENCES, LLC	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	14 th JUDICIAL DISTRICT
	§	
BETTER BUSINESS BUREAU OF	§	
METROPOLITAN DALLAS, INC.	§	
AND JON TAYLOR,	§	
	§	
Defendants.	§	DALLAS COUNTY, TEXAS

THIRD AFFIDAVIT OF TIM DARNELL

STATE OF TEXAS §
 §
 COUNTY OF DALLAS §

BEFORE ME, the undersigned authority personally appeared Tim Darnell, who after being duly sworn, deposed and stated as follows:

1. "My name is Tim Darnell. I am fully competent to make this Affidavit. I have personal knowledge of the statements contained herein and these statements made are true and correct. Out of an abundance of caution, I have clarified and expanded upon statements so that the Court will not have difficulty in applying my testimony to Defendant's evidence. I made a correction to some language in paragraph 15 and I elaborate on prior testimony beginning on paragraph 30.
2. "I have also attached a true and correct copy of the information contained on the website report of Advantage Conferences, LLC provided by the Better Business Bureau of Metropolitan Dallas for September 18, 2006 ("Statements of Latest BBB Posting") as Exhibit A to this affidavit. In that document, the letters "A", "B", "C", "D", and "E" have been circled near the terms "report," "unsatisfactory record," and "advertising claims." Attached at the end of Exhibit A are true and correct copies of the text that appeared on the screen of the Statements of Latest BBB Posting when the cursor on the screen came in contact with the word in bold that appear to define terms, such as "report;" "unsatisfactory record;" "advertising claims;" "Sales Practice Issues;" and "Resolved" ("Bold Term" or collectively, "Bold Terms"). Additionally, attached as Exhibit B is a true and correct copy of the BBB Code of Advertising that is available on the BBB website and is referenced in the term "advertising claims."
3. "The following is a true and correct copy of the text of information contained in the Statements of Latest BBB Posting. For testimony purposes, I thought that it would

be easiest to deal with the content of this message via examination of different paragraphs or availability of information that is visible from the perspective of the viewer.

4. "This information was obtained from searching Advantage Conferences, LLC's phone number of (972) 727-4995 on the website of the Better Business Bureau of Metropolitan Dallas on September 18, 2006. For convenience purposes, I have included the definitions that appear near the Bold Terms on the website. When you are searching the Language of the Latest BBB Posting, the text of the definitions beneath the Bold Term will "pop-up" and appear in a small readable box consisting of 5% to 20 % of the readable screen, which then fades away when the cursor on the computer screen moves away from the Bold Term. I have cut and copied a true and correct copy of the text of the Statements of the Latest BBB Posting. Near the location where the Bold Terms appear in the Latest BBB Posting, I included the cut and copied text appearing to define the Bold Terms "report," "unsatisfactory record," and "advertising claims" from the Latest BBB Posting.

5. "I included the location of the Bold Terms and their referenced definitions so that this Court can appreciate the effect of this language in this order on the reader and the extent of the impression of the message to the reader. The text of the Statement of the Latest BBB Posting, and my present and recent recollection of the Latest BBB Posting, read as follows:

Subject Paragraph 1

"BBB Reliability Report

The Better Business Bureau[®]
Serving Metropolitan Dallas
1601 Elm Street, Suite 3838
Dallas, TX 75201
(214) 220-2000
www.dallas.bbb.org

Subject Paragraph 2

Advantage Conferences, LLC
1513 Home Park Dr.
Allen, TX 75002
Telephone: (972) 727-4995
Fax: (214) 242-2423
www.advantageconferences.com

The BBB reports on members and non-members. If a company is a member of the BBB, it is stated in this **report**

BBB Definition:

report - A summary of activity reflected in a company's BBB file. Includes basic business background, BBB membership information, and Bureau complaint activity over the previous three years. Also reports may include any known government actions, advertising issues or other information that results from activity conducted by the BBB.

Subject Paragraph 3

Original Business Start Date: June 2003

Principal: Timothy Darnell, President

Customer Contact: Timothy Darnell, President

BBB Membership: This company is not a member.

Additional DBA Names

Millionaire Mindset Conferences

\$7,000.00 Over & Over Again

Brilliant Business Collection

Your Virtual Vault

Subject Paragraph 4**Nature Of Business**

This company states on its Web site that it offers conferences, motivational materials and an income opportunity.

Subject Paragraph 5**Customer Experience**

Based on BBB files, this company previously had an **unsatisfactory record** with the Bureau due to failure to discontinue **advertising claims**.

BBB Definition:

unsatisfactory record - A company has an "unsatisfactory business performance record" with the Bureau is based on the experiences reflected in BBB files. This file condition results when the company has failed

to resolve or respond to complaints, repeatedly failed to respond or resolve issues in a timely manner, failed to resolve the underlying issues for a **pattern**

BBB Definition:

pattern - More than 2 complaints involving the same allegations usually within 12 months that are significant in relation to the company's size and volume of business.

BBB Definition:

advertising claims - The Better Business Bureau reviews business advertising, (newspaper, magazine, TV, radio, internet) routinely to ensure that it is truthful and ethical. Claims in advertising are measured against basic advertising principles of the **BBB Code of Advertising**

BBB Definition:

BBB Code of Advertising - <http://www.bbb.org/membership/codeofad.asp>

Specifically, on portions of its Web site the company used the term "copyright" and the symbol for "trademark" with the name "Millionaire Mindset Conference Income Producing System". However, the company stated the name was in fact not copyrighted or trademarked. The company has recently modified its claims. On November 4, 2005 Bureau staff reviewed the site and confirmed the change had been made.

This location is the headquarters location for this company.

Subject Paragraph 6

When considering complaint information, please take into account the company's size and volume of transactions, and understand that the nature of complaints and a firm's responses to them are often more important than the number of complaints.

The Bureau processed a total of 1 complaint about this company in the last 36 months, our standard reporting period. Of the total of 1 complaint closed in 36 months, 1 was closed in the last year.

Sales Practice Issues

BBB Definition:

Sales Practice Issues - Claims of alleged sales presentations made in person or by telephone that contain misrepresentations of the product or service, high pressure sales practices, failure to disclose key conditions of the offer, and verbal representations not consistent with written contractual terms or agreements.

Resolved

BBB Definition:

Resolved - The company resolved the complaint issues.

1 - Company addressed the complaint issues. The consumer failed to acknowledge acceptance to the BBB.

Subject Paragraph 7

Company Management

Tim Darnell, president of Advantage Conferences, is identified in Bureau records as the president of All Star Entrepreneur, LLC, 1513 Home Park Dr., Allen, TX. which is out of business.

A separate report available on All Star Entrepreneur, LLC.

Subject Paragraph 8

Advertising Review

In October, 2005, the Bureau contacted the company regarding the use on its Web site of the term "copyright" and the "trademark" symbol with the name "Millionaire Mindset Conference Income Producing System". The company acknowledged that "Millionaire Mindset Conference Income Producing System" is not trademarked or copyrighted, and agreed to modify those claims on its Web site.

In October, 2005 the Bureau asked the company for substantiation of the earnings claims made on its Web site, for example, "\$7,000.00 Over and Over and Over Again". The company has provided information, which the BBB is reviewing.

In October of 2005, the Bureau questioned the company as to whether its marketing program is a pyramid. The company has provided information which the BBB is reviewing.

Subject Paragraph 9

Additional DBAs, Addresses and Telephone Numbers

Additional Phone Numbers

(888) 297-4166

Subject Paragraph 10

Industry Tips

Multi-level Marketing

Before participating in any multi-level plan, be sure you have a clear understanding of the company's marketing plan. The Bureau recommends that any multi-level marketing plan be reviewed by an attorney to make sure the plan is in compliance with multi-level laws in your state.

Determine whether you will be required to purchase a certain amount of inventory to participate in the plan, and whether company policies allow you to return unsold inventory for a refund. In most multi-level plans, the company does not offer refunds to distributors.

You should personally examine the product or service you would be selling to make sure it has not been misrepresented. You should do research to see if there is a market for the product in your area, and consider your own ability to sell. Be cautious of inflated earnings claims. As an independent distributor, no one can guarantee that you will achieve a certain income level."

End of selection.

6. "The last paragraph was the last text line of the Statements of Latest BBB Posting that I want to discuss in this reference. In as much as my discussion of the issues of the specific paragraphs of the Statements of Latest BBB Posting refer to similar impressions of me or Advantage Conferences LLC left by similar statements or statements regarding similar themes, I ask that these statements be applied to all of the various web postings or other statements of the BBB referencing to Tim Darnell or Advantage Conferences, LLC and ask that this Court understand that I want to make the same criticisms of Defendant's other similarly themed statements referencing Tim Darnell or Advantages Conferences, LLC without having to repeat my testimony for each and every individual web page viewing with similar or identical misleading language.

I have organized the subjects of my testimony regarding the effect of statements posted by the BBB as complaining of several things.

1. Many individual Statements of Latest BBB Posting are false;
2. The overall impression and effect of many of the Statements of Latest BBB Posting leave the reader with a false impression and/or the Better Business Bureau's failure to disclose additional information; and
3. The overall impression between the collection of different individual Statements of Latest BBB Posting leave the reader with a false impression.

Subject Paragraphs 1 and 2 contains false statements and leaves the reader with a false impression when it states:

"The BBB reports on members and non-members. If a company is a member of the BBB, it is stated in this report

BBB Definition:

report - A summary of activity reflected in a company's BBB file. Includes basic business background, BBB membership information, and Bureau complaint activity over the previous three years. Also reports may include any known government actions, advertising issues or other information that results from activity conducted by the BBB."

7. "I have personal knowledge that the information posted in Subject Paragraphs 1 and 2 of the Statements of Latest BBB Posting appears as above on Defendant's website and that this information is available to the general public. The document appears to be a "report" and appears to tell the reader that it is a credible source of information and that it appears to keep records and record data as an efficient organization. The document does not state that the BBB may have information in its report that it does not disclose or that conflicts with the information that it is reporting to the viewer.

8. "Subject Paragraph 3 also contains false and misleading information and I have personal knowledge that the information posted in Subject Paragraph 2 of the Statements of Latest BBB Posting appears as above on Defendant's website and that this information is available to the general public. The information is false and misleading because the reader is left with the impression that the Company Report will focus on Advantage Conferences, LLC, rather than an inappropriate connection between Advantage Conferences, LLC and All-Star Entrepreneur, LLC and a false statements that Tim Darnell is identified as the President of All-Star Entrepreneur, LLC and that All-Star Entrepreneur, LLC is out of business, as referenced in testimony regarding Subject Paragraphs.

According to the Texas Secretary of State website, the true and correct name of the entity is "All-Star Entrepreneur, LLC" and Tim Darnell's name is not listed anywhere.

9. "Subject Paragraph 3 contains false statements and leaves the reader with a false impression. I have personal knowledge that the information posted in Subject Paragraph 3 of the Statements of Latest BBB Posting appears as above on Defendant's website and that this information is available to the general public.

Subject Paragraph 3

Original Business Start Date: June 2003

Principal: Timothy Darnell, President

Customer Contact: Timothy Darnell, President

BBB Membership: This company is not a member.

This paragraph leaves the impression that Advantage Conferences is not a member of the better business bureau whereas Plaintiff would be a member if Defendant acted in good faith. When coupled with other defamatory paragraphs, this section further reinforces the negative impression left of Advantage Conferences, LLC.

10. "Subject Paragraphs 4 and 5 contain false statements and leave the reader with a false impression. I have personal knowledge that the information posted in Subject Paragraphs 4 and 5 of the Statements of Latest BBB Posting appears as above on Defendant's website and that this information is available to the general public,

The posting states that "this company states on its Web site that it offers conferences, motivational materials and an income opportunity." This statement is a false representation the Advantage Conference, LLC's goals, products, and business model. The consumer is left with the wrong image of the company.

Under the heading "Customer Experience," the website states that, "based on BBB files, this company previously had an unsatisfactory record with the Bureau due to failure to discontinue advertising claims..." The following terms are defined on the site as they appear below:

"BBB Definition:

unsatisfactory record - A company has an "unsatisfactory business performance record" with the Bureau is based on the experiences reflected in BBB files. This file condition results when the company has failed to resolve or respond to complaints, repeatedly failed to respond or resolve issues in a timely manner, failed to resolve the underlying issues for a **pattern**

BBB Definition:

pattern - More than 2 complaints involving the same allegations usually within 12 months that are significant in relation to the company's size and volume of business.

BBB Definition:

advertising claims - The Better Business Bureau reviews business advertising, (newspaper, magazine, TV, radio, internet) routinely to ensure that it is truthful and ethical. Claims in advertising are measured against basic advertising principles of the BBB Code of Advertising

BBB Definition:

BBB Code of Advertising - <http://www.bbb.org/membership/codeofad.asp>"

Specifically, on portions of its Web site the company used the term "copyright" and the symbol for "trademark" with the name "Millionaire Mindset Conference Income Producing System". However, the company stated the name was in fact not copyrighted or trademarked. The company has recently modified its claims. On November 4, 2005 Bureau staff reviewed the site and confirmed the change had been made.

This location is the headquarters location for this company."

11. "I have personal knowledge that the information posted in Subject Paragraphs 4 and 5 of the Statements of Latest BBB Posting appears as above on Defendant's website and that this information is available to the general public. The following statements or impressions from Subject Paragraphs 4 and 5 are false or misleading:

1. The heading "customer experience" is false and misleading, because it leaves the impression that the section either deals with the BBB's experience of Plaintiff or a third parties' experience with Plaintiff, but it deals with neither and is not based upon either. There is no customer who made an inquiry into the matters stated by the Better Business Bureau until after its first defamatory posting, which is also referenced in the other affidavit before this Court.
2. The information should read that it was "based on the BBB files," because the BBB files should reflect that Advantage Conferences, LLC was always courteous. The BBB files should indicate that Advantage Conferences, LLC filed a response before the BBB's self-imposed deadline of November 1, 2005. The BBB files should also indicate that Advantage Conferences, LLC has at all times attempted to satisfy the requirements and concerns of the BBB. Rather than repeating this testimony, I ask that this testimony be cross applied to similar complaints regarding the statements of Defendant.
3. The information is false or misleading because it says that Advantage Conferences, LLC has an "unsatisfactory record." This statement has a negative connotation and appears to adhere to an objective, measurable standard. However, there is no concrete activity of Plaintiff that falls within the category or description, which renders the statement false.

12. "The statement claims that "A company has an "unsatisfactory business performance record" with the Bureau is based on the experiences reflected in BBB files. This file condition results when the company has failed to resolve or respond to complaints, repeatedly failed to respond or resolve issues in a timely manner, failed to resolve the underlying issues for a pattern." If the "unsatisfactory business performance record" is because of the information in the files, then even the original statement by the BBB was not true, since there was no negative data in the file. Advantage Conferences, LLC did not "fail to resolve or respond to complaints." In fact, Advantage Conferences timely responded to every request of the BBB. There were also no complaints regarding Advantage Conferences when the BBB file was opened up and there were no complaints ever stated to this company that it repeatedly failed to respond or resolve issues in a timely manner.

Additionally, the statement cannot be true because of any reference of a failure "to resolve the underlying issues for a pattern," where "pattern" is defined as "more than 2 complaints involving the same allegations usually within 12 months that are significant in relation to the company's size and volume of business."

If Advantage Conferences had no history of information in the files, no bad history of failing to respond to complaints, repeatedly failing to respond or resolve issues in a timely manner, or failing resolve the underlying issues for a pattern, then this information regarding the possibility of having a unsatisfactory record is misleading.

4. It is false and misleading to state that Advantage Conferences had an unsatisfactory record with the Bureau when such a standard is vague or is not based on any of the objective, measurable components. The impression is that the performance or responsiveness of the Company is in question or is not good when there is no evidence to the contrary.
 5. It is false and misleading to refer to a past unsatisfactory record when the current record is compliant and there is no procedure to request removal of the references to an unsatisfactory record.
 6. It is false and misleading to refer to a past unsatisfactory record with the Bureau due to failure to discontinue advertising claims when all of the evidence should indicate that Advantage Conferences, LLC removed every copyright or trademark reference to appease the BBB when requested or notified that the BBB cared to have it removed. It is false and misleading to suggest that Advantage Conferences appeared to deliberately "fail to discontinue advertising claims," because Advantage Conferences has, at all times, attempted to appease the BBB's requirements.
 7. It is false and misleading for the Better Business Bureau to state that the information in its site is "truthful and ethical" in light of all of the misstatements and in light of the fact that such a statement makes the viewer more likely to believe erroneous information. Under the definition of advertising claims, the BBB states in its website that, "The Better Business Bureau reviews business advertising, (newspaper, magazine, TV, radio, internet) routinely to ensure that it is truthful and ethical. Claims in advertising are measured against basic advertising principles of the BBB Code of Advertising."
 8. It is also false and misleading to have a reference to an unsatisfactory record or violation of the Code of Advertising when the Code of Advertising does not refer to rules regarding the use of copyright or trademarks.
13. "A true and correct copy of the BBB Code of Advertising is attached to this affidavit as Exhibit B. It is also attached to the exhibit of Christopher Burgess. The BBB Code of Advertising can be accessed on the website while the viewer is examining the Statement of Latest BBB Posting. Here, the viewer is left with the impression that Advantage Conferences violated the BBB's code of advertising, even though no section sets guidelines for, or restricts or prohibits the use of references to copyright or trademark symbols.

9. It is also false and misleading to state that there are specific trademark or copyright issues involving Advantage Conferences. First, the author, Christopher Burgess of the BBB, is not an attorney and he admitted that he did not consult an attorney before making determinations on this copyright and trademark issues. Second, Advantage Conferences did contact a copyright attorney regarding filing for the protection and the use of several of its commonly used phrases, including the phrase "Millionaire Mindset Income Producing System." Third, only Advantage Conferences used the phrase "Millionaire Mindset Income Producing System" or references to it and only Advantage Conferences sought to protect the phrase. I know of no instance where someone stated that they purchased a product based on a phrase or a copyright or trademark and I know of no other company that has a similar phrase. Fourth, the discussion of this subject as it appears on the BBB website is likely to cause an undue emphasis on an issue that is essentially resolved. A reader should not think of Advantage Conferences as an unethical actor that is subject to scrutiny. Instead the truthful and nonambiguous discussion of Advantage Conferences would not suggest that it is likely to misuse references to intellectual property, since it appears to always attempt to comply with the BBB standard. It is also false and misleading to suggest that an alleged violation of a copyright or trademark rule violation exists when the BBB has no written policy defining when things can and cannot be used and has never disciplined another north Texas business for similar activity or offered any other critical review of any other website's trademark or copyright information.

14. "Subject Paragraph 6 contains false and misleading statements which leaves the reader with a false impression. I have personal knowledge that the information posted in Subject Paragraph 6 of the Statements of Latest BBB Posting appears as above on Defendant's website and that this information is available to the general public.

Under the heading "Sales Practice Issues" which are defined as "Claims of alleged sales presentations made in person or by telephone that contain misrepresentations of the product or service, high pressure sales practices, failure to disclose key conditions of the offer, and verbal representations not consistent with written contractual terms or agreements," the BBB states that there was a sales practice issue that was resolved. This statement is false and misleading because Advantage Conferences is not subject to any good faith complaint that it engaged in any activity giving rise to a sales practice issue. There have been no cases where an applicant has claimed that Advantage Conferences told conference purchaser or other consumer one thing and persuaded that individual to sign something else or anything else consistent with the definition of "Sales Practice Issues." The reader is left with the impression that there was at least one "sales practice issue" involving advantage conferences and that at least one of these involved a complainant who was not satisfied and that such information was newsworthy. Coupled with the other negative, false, and misleading statements involving Advantage Conferences, the reader is left with an untrue, negative image of Advantage Conferences.

14. "Subject Paragraph 7 contains false statements and leaves the reader with a false impression. I have personal knowledge that the information posted in Subject Paragraph 7 of the Statements of Latest BBB Posting appears as above on Defendant's website and that this information is available to the general public.

Under the section entitled, "Company Management," the BBB states that "Tim Darnell, president of Advantage Conferences, is identified in Bureau records as the president of All Star Entrepreneur, LLC, 1513 Home Park Dr., Allen, TX. which is out of business."

15. "This information is false, misleading, and untrue. I need to clarify my prior affidavit, which appear to have typographical errors regarding the correct entity name and the posted entity name. First, correct records of the BBB should indicate that Tim Darnell is not the President of "All Star Entrepreneurs" or "All-Star Entrepreneurs, LLC" or any other similarly named entity. Second, the entity is misidentified – the correct entity name should read "All-Star Entrepreneur, LLC". The earlier defamatory postings added an "s" to the name of the entity; the more recent postings removed the "s" but also removed the hyphen in the corporate name. Third, the bureau should note that with the Texas Secretary of State, the letters sent to counsel for Defendant, and with the information given to Mr. Burgess, the record should reflect that the President of All-Star Entrepreneur, LLC is Claudia Cawley. Fourth, the overall effect of this statement also implies something negative about Tim Darnell and Advantage Conferences, LLC. Namely, that Tim Darnell was the last person in charge of an organization that went out of business and that such a fate is possible for the entity known as Advantage Conferences, LLC.

According to the Texas Secretary of State website, the true and correct version of the entity name is "All-Star Entrepreneur, LLC" and Tim Darnell's name is not listed anywhere.

16. "Subject Paragraph 8 contains false statements and leaves the reader with a false impression. I have personal knowledge that the information posted in Subject Paragraph 8 of the Statements of Latest BBB Posting appears as above on Defendant's website and that this information is available to the general public.

The section is titled "Advertising Review," which is false and misleading because it appears to the reader that there has been a thorough review of Advantage Conferences' advertising when the review was cursory. The site states that:

"In October, 2005, the Bureau contacted the company regarding the use on its Web site of the term "copyright" and the "trademark" symbol with the name "Millionaire Mindset Conference Income Producing System". The company acknowledged that "Millionaire Mindset Conference Income Producing System" is not trademarked or copyrighted, and agreed to modify those claims on its Web site.

In October, 2005 the Bureau asked the company for substantiation of the earnings claims made on its Web site, for example, "\$7,000.00 Over and Over and Over Again". The company has provided information, which the BBB is reviewing.

In October of 2005, the Bureau questioned the company as to whether its marketing program is a pyramid. The company has provided information which the BBB is reviewing."

17. "The statements relating to the Millionaire Mindset Income Producing System are false and misleading for the reasons that I already stated. The following statement is false and misleading:

"In October, 2005 the Bureau asked the company for substantiation of the earnings claims made on its Web site, for example, "\$7,000.00 Over and Over and Over Again". The company has provided information, which the BBB is reviewing."

First, the statement does not disclose that the information was provided timely in October 2005, which leaves the impression that the company did not respond timely. Second, the statement does not provide a timeline for review, which suggests that the review process requires this much time because there is material to review or because the company is making misleading claims. Third, the company suggests that taking almost a year to review claims is reasonable, which it is not, which leaves an impression on the reader that there is information suggesting that Advantage Conferences does not pay its representatives commissions for sales or that individuals have not make "\$ 7,000 over and over and over again," or \$ 21,000 from sales even though I have provided a list of many representatives who have done so. I have personal knowledge that Jack Weinzierl and other representatives have done so. It is defamatory to suggest that a company has financial problems or issues that raise a false advertising claim when it does not do so.

Additionally, another statement of the BBB is misleading and false:

"In October of 2005, the Bureau questioned the company as to whether its marketing program is a pyramid. The company has provided information which the BBB is reviewing."

18. "This statement is false, misleading and defamatory because it suggests that Advantage Conferences is conducting an illegal pyramid scheme or is in some way affiliated with a pyramid. Everyone knows that the word "pyramid" refers to an illegal pyramid scheme or ponzi scheme. Any direct sales operation, home based business, convention business, or variation of a multi level marketing business has to work hard to avoid the stain on a businesses' record or integrity anytime that the "pyramid" issue is asserted.

Advantage Conferences, LLC sued the Better Business Bureau because their initial posting said that there was "evidence that Advantage Conferences, LLC was conducting an illegal pyramid scheme." This statement is untrue, false, and misleading.

Even though the Better Business Bureau removed the words except "pyramid" as stated above in the website, the statement is defamatory and false. Advantage Conferences, LLC is compliant with all state and federal laws and there is no evidence that Advantage Conferences, LLC engages in illegal activity.

19. "The fact that the common meaning of "pyramid" can also be seen in the statements of Christopher Burgess, including his notes that "pyramids are illegal."

20. "The statements by the BBB are false, misleading and defamatory because the reader is not told that the BBB received its information quickly and timely and that it chose to continue posting that it is reviewing this information. The reader cannot get a sense that all of the information was provided to the Better Business Bureau and that although there is over 7,000 pages of documents produced, the Better Business Bureau is still "reviewing" information on the pyramid issue. The effect of these statements on the reader is that the reader believes that there is an issue as to whether Advantage Conferences, LLC is a pyramid, meaning that there is an issue as to whether a representative or a conference ticket purchaser will lose their money or be part of an illegal operation if they purchase an Advantage Conference product.

21. "These false and misleading statements also have an overall defamatory effect. They portray a picture where Advantage Conferences is falsely portrayed as company with an unsatisfactory record rather than a company that works to address its issues. The reader is given the false belief or suggestion that the business is operating a pyramid or an illegal pyramid scheme, which is an immediate red flag that prevents further inquiries into the business, people, and products. This red flag causes people to not to be able to sell my product. In this sales industry, the reputation of a business is very important and a business cannot be wrongly associated with a "pyramid." I have personal knowledge of a sales representative who has lost sales for Advantage Conferences that way. His name is Gregg Poffenbarger. He stated that, and he was, unable to sell the Advantage Conferences, LLC Millionaire Mindset Conference IV (MMC IV) product. That product would have resulted in \$ 3,000 in sales to Advantage Conferences. Additionally, he cannot sell the product with the BBB posting out there as it is. The same is true for every representative that is attempting to sell Advantage Conferences products.

22. "All of statements in the Statements of Latest BBB Posting and other postings are "of or concerning" Advantage Conferences, LLC. All of the statements are on a webpage that purports to be the BBB's company report on Advantage Conferences, LLC.

23. "All of these statements have defamatory meaning. I incorporate all of my prior testimony as to why these statements are defamatory, false, and misleading. These statements are libelous because they tend to blacken the memory of the dead or a living person's reputation and thereby expose the person to public hatred, contempt or ridicule, or financial injury or impeach a person's honesty, integrity, virtue, or reputation or to cause a person to suffer financial injury. These statements suggest that Advantage

Conferences, LLC should not be trusted as a business or with a person's money. These statements question the integrity or business success of the company's leader while incorrectly stating that the person is the head of an organization that is out of business. The statements use a fictitious copyright and trademark issue as a guise for discussing manners in which Advantage Conferences appears to be unsatisfactory. Additionally, these statements accuse the company of being a pyramid, which is a common reference or suggestion that the business is operating an illegal pyramid scheme. The overall effect of the posting is that the reputation of the company is harmed. Its ability to respond accurately or truthfully by the BBB's standards is put into question.

Whether isolated individually or understood in the context of the whole posting, all of these statements have a defamatory meaning. The statements seem to suggest that the business is run by a person who was the president of a company that then went out of business ("All Star Entrepreneur, LLC" or a reference to "All-Star Entrepreneurs, LLC"). These statements are not true. I was not the President of that business if or when it went out of business. The business appears to be in business. The postings with the Texas Secretary of State confirm this fact. The postings with the Texas Secretary of State confirm that the President of All-Star Entrepreneur, LLC is Claudia Cawley. The BBB should have access to these records. Exhibit F to my first affidavit to this Court contains a letter by Advantage Conferences, LLC to Counsel for Defendant that that letter confirms the fact that this information of Ms. Cawley's name was available Defendant from November 9, 2005 forward, but that the BBB chose to mislead the public by suggesting that the information in its records indicated that I (Tim Darnell) was the President when it went out of business.

According to the Texas Secretary of State website, the true and correct name of the entity is "All-Star Entrepreneur, LLC" and my name (Tim Darnell) is name is not listed anywhere.

By questioning the personal reputation and the reputation for business success of me (Tim Darnell, CEO, President, and officer of Advantage Conferences, LLC), the statements impeach the business reputation of Advantage Conferences, LLC. All of the statements impeach the honesty of Advantage Conferences, LLC. The references to a pyramid are references to a crime and they impute criminal activity, as well as separately harm the business reputation of Advantage Conferences, LLC. There is also a defamation by innuendo and implication which is raised by a review of evidence of a "pyramid."

Additionally, the overall innuendo also suggests that the company is incompetent or nonresponsive. The Original Affidavit of Tim Darnell establishes that Advantage Conferences worked in good faith to provide valuable information to Defendant in timely, competent, and professional manner. I would like for that evidence to be evidence for this hearing. Exhibit A to that affidavit is a true and correct copy of the information requested by the BBB and Exhibit B establishes the information that was provided. Exhibit C provides a true and correct copy of the defamatory posting provided by the BBB at that time. The BBB did not have the right to suggest on November 2, 2005, the date of the posting of that webpage by the BBB relating to Advantage Conferences, LLC, that Advantage Conferences did not post a reply when it did do so. Exhibit D to that affidavit is a true and correct copy of the communication to Defendant on November 3, 2005 proving that the BBB was notified of its erroneous postings.

Exhibit F to the affidavit establishes that the BBB was well aware that its irresponsible postings were harming Advantage Conferences, LLC and that the BBB chose to continue its postings anyway.

There is evidence that the statements of the BBB were published with malice. On numerous occasions, I told the BBB that their statements were not truthful. I even included references to true statements as indicated above and these representations and references were either ignored or were not used to change the content of the BBB posting. Exhibits B, F, and G to my prior affidavit are true and correct copies of communications to Defendant to help it understand the falsity of its information. A true and correct copy of All-Star Entrepreneurs, LLC's filings with the Texas Secretary of State were given to the other side in discovery and are attached as Exhibit C to this affidavit. These documents indicate that Claudia Cawley, not me (Tim Darnell) is the President of All-Star Entrepreneurs, LLC. The BBB chose to ignore this information. Additionally, the BBB chose to ignore information from Zena Karelin, who is evidence of the effect of the BBB posting. She requested a refund of the MMC IV conference ticket after reading the information on the BBB site. Advantage Conferences, LLC lost \$ 1,500 by issuing a partial refund in response to her complaints. The BBB is aware that its actions have caused damages in the form of lost conference sales to Michael White, who decided that he could not trust Advantage Conferences after reading the posting and requested and received a refund of \$ 7,000 from the revenue that it would have received from the conference sale to Mr. White. Mr. White requested a refund after attending the conference. Here, the BBB is purposefully avoiding the truth that only its litigation, and not its investigation is ongoing. The BBB is also purposefully avoiding the truth that Claudia Cawley is the President of All-Star Entrepreneurs, LLC and that Tim Darnell is not the President of All-Star Entrepreneur, LLC, as stated. The BBB is purposefully avoiding the fact that it has no copyright policy and it is continuing to post data on false advertising issues and customer experience, when such information is not the reasonable conclusion of the data that the BBB has or the true facts. The BBB has knowledge as to the falsity of its information and the recklessness of its conduct. All of this evidence comes to the conclusion that Defendant published one or more statements that were false and that it is true beyond clear and convincing evidence. Here, the attorney's letters and the references to the information available at the Secretary of State's office, among other evidence, prove that Defendant knows that the information was false. The fact that the BBB had common knowledge of individuals who also contacted it before requesting or receiving a refund from Plaintiff means that Defendant knows that its postings had economic consequences to Plaintiff. I have personal knowledge of the fact that Zena Karelin would not have requested a refund and cost Advantage Conferences, LLC \$ 1,500 if she was not affected by the BBB posting. I have personal knowledge of the fact that Michael White would not have requested a refund and cost Advantage Conferences, LLC \$ 7,000 if he was not affected by the BBB posting. There are many other instances like this and Advantage Conferences is entitled to a trial on these issues.

24. "On the issue of proximate causation and damages, I incorporate the prior testimony. All of the damages stated before are a direct and proximate cause of the statements made by Defendant. If Zena Karelin and Michael White did not read the postings of the BBB including the Latest BBB Posting, Advantage Conferences would

not suffer the combined \$ 8,500 in damages. Zena Karelin had an agreement with Advantage Conferences and purchased a conference ticket for \$ 10,000. Of the \$ 10,000, \$ 3,000 was received by Advantage Conferences directly. Zena Karelin read the BBB postings and ultimately demanded and received \$ 1,500. This was money directly from Advantage Conferences, LLC's bottom line that was lost and given to Zena Karelin. Michael White had an agreement with Advantage Conferences and purchased a conference ticket for \$ 10,000. Like Ms. Karelin, the \$ 3,000 from Mr. White was received by Advantage Conferences directly. Mr. White's \$ 10,000 was returned as requested after the BBB posting was read by Mr. White. Both of these individuals were affected by the BBB posting and stated it as a reason for a request for a refund. Neither of these individuals will sell other Advantage Conferences products. The damages caused by the BBB extend beyond the incidences of lost sales that I have reported. I know that Advantage Conferences lost a great sales rep named Gregg Poffenbarger who was unable to sell any more AC conference tickets after the BBB posting. The BBB knew of his agreement with AC because his name was sent over to the BBB in response to a request on October 26, 2005. A true and correct copy of that letter is attached my first affidavit. We lost Gregg Poffenbarger as a sales representative after the BB interviewed him and after the BBB refused to discontinue its web postings.

The damages caused by the BBB cost over \$ 50 per week, just in measurement of the value of the time of me and my support staff and the amount of time that we have to spend reviewing issues related not to the preparation, but to the BBB's postings. There are many other sales representatives who have had difficulty selling the Advantage Conferences products with the BBB's postings and this results in not only the actual losses as detailed above, but aggregate losses by the lost sales and sales representatives. Plaintiff has pled and seeks recovery for lost actual and future sales. The three individuals and their loss of sales above and actual out of pocket payouts were only a few instances of the damages. Additionally, Advantage Conferences seeks nominal damages in the amount of \$ 100 per time that defamatory or actionable information was sent to third parties.

I want to re-urge and refer to my prior affidavit on file with this Court. That affidavit provides true and correct copies of postings with the BBB that are separately actionable and were published on November 2, 2005, November 3, 2005, November 4, 2005, and November 10, 2005. For the reasons above, those statements are false, defamatory, and proximately caused damages to Advantage Conferences, LLC.

25. "On the issue with the breach of contract, Advantage Conferences, LLC had an agreement with the BBB whereby it would pay \$ 375 for the right of a review and consideration of membership in good faith. The BBB did not act in good faith. The affidavit of me (Tim Darnell) already on file with this Court established that the BBB requested that Advantage Conferences, LLC provide a copy of information that the BBB would review in determining its application for membership. A true and correct copy of a letter from the BBB dated October 26, 2005 requested this information. That letter was not sent in good faith, since Christopher Burgess of the BBB already decided to reject the application of Advantage Conferences and wrote "no" on the application. A true and correct copy of this application is also attached as Exhibit 13 with to deposition of Christopher Burgess. The word, "no" appears with the date October 21, 2005 on the

application even before the BBB requested the proof of earnings claim, which Advantage Conferences, LLC provided. This information was requested by November 1, 2005. This is evidence that the BBB used the contract as an excuse to gather information even though it knew that it was not going to approve Plaintiff's membership. This constitutes a breach of the agreement between the parties. The information was only provided in response to the membership application.

26. "On the negligence issue, Defendant had a duty to be honest with Advantage Conferences. Defendant had a duty to handle information in a reasonable manner and to adequately check the accuracy of the information that it was posting. Defendant had a duty because it states that its reports are truthful. Defendant also has a duty because the BBB has a good reputation among the community. The general public relies upon the BBB reports and the BBB should know this fact. The BBB is even referenced on a governmental website as a credible source. This is the FTC's website. Defendant should have handled all of the above complaints of misstating information better. Defendant should have investigated quickly and should have come to a conclusion on the pyramid or earnings issue. Defendant should not have told the public that the issue is still under instigation. In fact, Defendant is careless in allowing an investigation on important issues to last so long and to provide this impression to the public. Defendant should have handled the information regarding "All-Star Entrepreneurs, LLC," "All Star Entrepreneur, LCC" "Tim Darnell" and "Claudia Cawley" in a more accurate manner and should have taken extra lengths to avoid posting what appears to be untrue. Just as George Bush is the President of the United States and "Jimmy Carter" is an incorrect answer, "Tim Darnell" is not the President of "All-Star Entrepreneurs, LLC," "All Star Entrepreneur, LCC." When the BBB failed to act reasonably as set out by the duties above, the BBB proximately caused damages in the form of the damages expressed above, among others. A jury should decide these issues.

27. "As for the issues with regards to the torts of tortious interference. The above postings relating to Advantage Conferences were intentional, purposeful acts. These acts were independently tortious through defamation or negligence, and these acts caused the previously identified individuals, who all had purchased Advantage Conference products to take actions that resulted in the financial consequences as outlined above. I have already testified that the actual contracts of Zena Karelin and Michael White were lost. We know that the BBB knew of the contract of Zena Karelin because she contacted the BBB when she was still a pro rep for AC. Additionally, we lost prospective sales from Gregg Poffenbarger. Mr. Poffenbarger was an MMC level IV pro representative who had at least four successful conference sales for AC prior to the BBB posting. Gregg Poffenbarger cannot sell to his prospective representatives because of this positing. Similarly, Michael Ponder, an actual pro rep will no longer sell the AC products because of the BBB posting. AC suffers damages in the form of lost prospective contracts because none of the prospects of Mr. Ponder can be converted into actual sales. Similarly, Sharon Jones did not purchase the AC product for over six months because of the effect of the BBB posting. She was very reluctant to purchase the AC product after the BBB posting and eventually agreed to do so after additional expenses of Advantage Conferences, LLC. Many prospective representatives do not chose to re contact

Advantage Conferences, LLC after they read the posting. For thousands of similar publications by Defendant, the damages are reoccurring. My testimony is the same for the damages associated with the lost sales of the Fundraising Advantage and Hidden Treasures insurance product. I have sixty representatives who are licensed insurance agents and are ready, willing, and able to sell the Hidden Treasures product, but these representatives are unable to approach their local churches regarding these sales because of the BBB's postings. This affects the AC contract with Life Analysis Equity Group, who is the insurance underwriter for the Hidden Treasures insurance product. AC has a contract with LAEG that it produced in discovery. The underwriter is Rex Insurance services. Under this agreement Advantage Conferences makes 70 % of the insurance commissions from its sales representatives. AC is unable to take advantage of this opportunity until the BBB posting is eliminated. I have had personal discussions with Cottonwood Creek Baptist Church and I know that AC cannot sell this product until the BBB posting issues are resolved. The BBB has been told of this relationship that is hindered by its current postings.

28. "I have reviewed the Motion for Summary Judgment and its contents and the statements and assertions contained therein are untrue. I believe that I have discussed every issue is the subject of the Motion for Summary Judgment and that my issues have raised fact issues for every reasons opposing counsel has for granting summary judgment. I would like to reapply every fact that I have stated with regards to all of the issues raised in Defendant's Motion. I specifically deny that the "Complained of Statement" is true. The statements are false and misleading when read individually or in the context as outlined above. I specifically deny that the "Second Complained of Statement" is true. The statements are false and misleading when read individually or in the context as outlined above and it ultimately refers to Advantage Conferences, LLC on the same web posting. The "First and Second" Complained of Statements are capable of defamatory meaning. In the context of the overall statement, they combined to have a defamatory effect. The "First and Second" Complained of Statements are capable of defamatory meanings, given their context. The Second, Third, Fourth, Fifth, and Seventh Complained of statements are actionable, given the overall context. No statements by Defendant should be protected by a privilege, given the evidence that the BBB published statements it knew to be wrong. The statements were published with malice and they were published with negligence. The known effect of the business reputation and the known criminal implications of using the term "pyramid" establish common law malice.

29. "I need this Court to grant a continuance and allow me to also sue individually and recover damages against the BBB for its actions and its effect upon me individually and Advantage Conferences, LLC. The BBB did not begin defaming me or Advantage Conferences, LLC until less than a year ago from this date.

30. The meaning of the statements of the BBB need to be understood in the original context, rather than be isolated into individual statements, because the effect of the entire message. The individual statements have combined to have an overall defamatory effect. The fact that the statements came from the BBB, which has a good reputation among the community, tends to have the reader believe that the facts are

reliable. Apparently the BBB believes that it can dismiss this case by dealing with segments rather than the entire communication. The reader is not given the full effect of the BBB's posting by isolating out other words or phrases in an attempt to find that the other phrases are without meaning or defamatory content. Defendant has omitted facts or juxtaposed facts in a misleading way. See affidavit of Tim Darnell.

I have also noticed that Defendant's "complained of statements" were not presented for summary judgment isolation or elimination in the manner in which they appeared originally or in the original context. For example, Defendant chose to break down the terms of the "First Statement" and "Fifth Statement," even though the terms were originally presented in two consecutive statements in the first paragraph. See BBB posting dated November 2, 2005, which was originally attached as Exhibit C of the original affidavit of Tim Darnell. The effect of the meaning of the combined statements has never been properly raised as a summary judgment issue in this case and summary judgment attempting to dispose the entire case in this manner is not appropriate. Thus, the issues related to communications in the BBB posting dated November 2, 2005 (or the issues, relating to all communications by the BBB regarding AC between the October 28, 2005 report and the November 5, 2005 report) are not before this Court.

31. Third, Plaintiff objects and argues that that information contained on page 13 and 14 of Defendant's motion is inaccurate. The Court is led to believe that it has been given a true representation as to the content on the BBB's website regarding AC after November 5, 2005. The BBB posting dated September 18, 2006, on file with this Court and attached to the affidavit of Tim Darnell, provides a true and correct copy of the BBB's statements regarding Plaintiff over the past nine months.

32. The statements, when offered together, are not true and offer a defamatory meaning suggesting that the management of Advantage Conferences, LLC is incompetent and dishonest. The reader is given the impression that Advantage Conferences may be an illegal pyramid scheme, Advantage Conferences has issues with false advertising with the Better Business Bureau that needed to be noted, that Advantage Conferences was not cooperative, that Advantage Conferences has a leader who brought another business to economic misfortune, and that Advantage Conferences had "sales practice issues."

33. The "First Complained of Statement" is not substantially true.

Defendant identifies the First Complained of Statement as:

This company [AC] states on its website that it offers business training, motivational materials and conferences regarding an income opportunity.

Advantage Conferences does not state on its website that it is selling or offering business training, motivational materials and conferences regarding an "income opportunity." First, this statement is not made in one cohesive sentence on the Advantage Conferences, LLC website. Second, it is fundamentally misleading to suggest to any person that the motivational materials provided by Advantages Conferences, LLC are available for the purpose of aiding an income opportunity. Third, it is fundamentally

misleading to suggest to any person that the Millionaire Mindset Conference is held, focused upon, or centered upon the income opportunity. Mr. Burgess did not have any interest in investigating the AC products, such as the conferences, virtual vault, Hidden Treasures, the Fundraising Advantage, or the personalized marketing website. The content of the conferences is not focused around discussions of the income opportunity or methods of selling conference tickets to third parties. The speakers at the conference do not give lectures or open discussions where the focus is the income opportunity. The conference does focus upon business principles, biblical principles, and "thinking like a millionaire" through a discussion with many actual millionaires, but the discussion of "thinking like a millionaire" within the conference is not in regards to the income opportunity offered by Advantage Conferences. The Conference lasts two days and many high quality speakers attend the conference. Brian Bohrer, John Commuta (debt management), and Sue Goldstein are just a few of the wonderful speakers that Advantage Conferences calls upon.

34. Not only is the First Complained of Statement False, it is also reasonably capable of defamatory meaning.

Once it is established that the First Complained of Statement is False or even not substantially true, it follows that a mischaracterization of a business from a third party is capable of defamatory meaning. However, a statement that Advantage Conferences hosts conferences regarding its income opportunity is defamatory; it suggests that there is not much substance or value to the company, its products, or its reputation and that the company is only promoting its business opportunity.

Additionally, within the context of a website that erroneously states that Advantage Conferences offers conferences regarding its business opportunity, this information, coupled with information stating that the officers of the company were in charge of another organization that is no longer in business, coupled with information that the organization has an unsatisfactory record with BBB for advertising claims, portrays an even stronger message that there is not much substance or value to the company, its products, or its reputation and that the company is only promoting its business opportunity.

35. The Second Complained of Statement is not substantially true.

Defendant identifies the "Second Complained of Statement" as:

Mr. Darnell, president of Advantage Conferences, is identified in the Bureau records as the president of All Star Entrepreneurs. On October 21, 2005, Mr. Darnell stated to the Better Business Bureau that All-Star Entrepreneurs is out of business. A separate report is available on All-Star Entrepreneurs, LLC.

First, there is no "All Star Entrepreneurs" or "All-Star Entrepreneurs." The correct entity name of the entity is "All-Star Entrepreneur, LLC." Second, Claudia Cawley, not me (Tim Darnell), is the President of All-Star Entrepreneur. Soon after the

original posting by the BBB, the BBB was informed of this fact and failed to make any changes to this information. The true and correct letters attached to my first affidavit were sent from my attorney to the BBB's attorney before AC filed suit. The actual secretary of state documents were acquired and were given to the authorized representative of the BBB, but the website was not changed. I copied true and correct copies of those letters as Exhibit C to the affidavit that I filed Monday, September 18, 2006. Third, from a grammatical point of view, I (Tim Darnell) was not "the" President of All-Star Entrepreneur, LLC, I was "a" president. Everyone who understands the English language knows that there is a difference in the active and passive tense associated with the word "the." George Bush is "the" President of the United States. Grover Cleveland was a President. It was incorrect for the BBB to suggest that I (Tim Darnell) was "the" president instead of "a" president. The President is the person who was in charge of All-Star Entrepreneur, LLC when it evidently filed bankruptcy. That person is Claudia Cawley. Additionally, there is a difference in suggesting that a business leader was involved in an organization that later failed and suggesting that a business leader owned or ran a business that failed. Third, the statement implies that I (Mr. Darnell) had a conversation with a representative of the BBB, acknowledged that I was the President of "All Star Entrepreneurs" and that that business is out of business. I do not agree to the first statement and I certainly did not have a conversation where I suggested that he was the head of an organization that I ran out of business. Fourth, it is fundamentally misleading for the BBB to tell the public information that appears to be trustworthy, with qualifying phrases such as having information based upon what is "identified in Bureau records" and to attempt to hide behind a legal defense that although this information is not really true, it is permissible to suggest to the public that the information is not reliable as long as the Better Business Bureau keeps an out of date or near empty file. Because the BBB defines the term "report," the reader is likely to assume that the "report" attempts to be accurate.

Fifth, the evidence submitted by Defendant acknowledges that the BBB knew that Claudia Cawley, and not me (Tim Darnell) was the President of All-Star Entrepreneur, LLC. Exhibit F 5 establishes that the BBB knew that Claudia Cawley was the President; her signature (and not the signature of Mr. Darnell) is the only signature on any of the Bankruptcy filings. Sixth, the suggestion that the first sentence of the Second Complained of Complaint is "substantially true" because of information kept in one file by the BBB is intellectually insincere. Through my actions in response to the BBB posting, which included contacting the BBB's attorneys before filing suit and complaining on numerous occasions on this issue, there should have been an update to the BBB's file or records. Certainly, the numerous complaints should have been considered a request to change the information. It is insincere to post something misleading and suggest that the BBB never had reason to update its files. Additionally, I am sure that the BBB attorneys know that communications delivered to them are the same as communications given to a client. Finally, because Claudia Cawley became the President of All-Star Entrepreneur, LLC and because she filed a bankruptcy petition on behalf of the organization, it is unlikely that the BBB would have allowed me to make the changes and All-Star Entrepreneur, LLC itself would have been incapable of making the change soon after.

The Better Business Bureau was aware of all of the above information and so it knew that the first sentence of the Second Complained of Statement was not true. The BBB could have had an accurate statement that would not inappropriately link All-Star Entrepreneur, LLC's bankruptcy and the new business. Lastly, a party should not be able to assert that a statement is true just because it keeps poor records.

36. The second Complained of Statement is "of and concerning" AC.

The Second Complained of Statement was on a Better Business Bureau report referencing Advantage Conferences, LLC. It is referencing the "Company Management" of AC. This statement refers to the current President of AC and is an obvious reference to the business competency and experience of AC. Anyone who searched Advantage Conferences, LLC will know that this statement is referring to the leadership of AC.

37. Additionally, the Second Complained of Statement is reasonably capable of Defamatory Meaning.

The Second Complained of Statement is defamatory because it suggests that the person who is the President of AC is a person who was the President of a prior organization who was not successful in business. Even the implication that a business leader filed a Chapter 7 bankruptcy is defamatory. It is even worse when the statement is not qualified to note that the business leader was not in control of the business when it failed. The obvious implication is a derogatory comment on the business reputation of Advantage Conferences.

The Second Complained of Statement is defamatory when coupled with the rest of the BBB's posting. The BBB has suggested that a business sells conferences that are focused on selling a business opportunity and then suggests that the President was in charge of another business which failed. This has a direct effect on the perception of AC and its products.

38. The Second Complained of Statement is actionable.

The Second Complained of Statement is actionable because it is more than a suggestion that I (Mr. Darnell) am not a good businessman and that I am not one that should be trusted to not drive a business to failure; it is not a statement of opinion. It is a suggestion that Tim Darnell of Advantage Conferences, LLC failed in another business effort and that Advantage Conferences, LLC is likely to fail. The obvious implication is that the products (including conferences) of Advantage Conferences, LLC are not likely to have value. Additionally, the appropriate focus of a defamation cause of action is on the entire statement rather than a sentence.

39. The Third Complained of Statement is not substantially true.

First, this statement is not true because it is based upon the unilateral decision making of Defendant. Defendant cannot make a statement true just because it concludes

its own investigation and finds facts favorable to itself. The truth of the matter asserted does not depend on whether the BBB took certain actions (i.e., writing up a company for a violation), but whether the actions it took were justified and whether the description of its actions have an overall effect different than the correct accord or description that should have been given those actions.

The deposition of Christopher Burgess establishes that the BBB did something to AC that it had never done before. The BBB declared that a party had an unsatisfactory record for violating copyright and trademark policies that it did not even have in place!

Because this matter was discussed in so much detail in providing all of the reasons why the statements were untrue in other responses to Defendant's motion, I hope that this Court cross applies prior testimony.

Defendant essentially states that the Third Complained of Statement is true because the BBB has a method of labeling businesses and it did so here. This alone cannot create a defense of truth. This argument is similar to the argument that the BBB cannot keep sloppy records and rely upon them.

In this case, the truth of the matter asserted depends upon the criterion for when an unsatisfactory record occurs, how long it should remain as "unsatisfactory," and how important it is tell provide this information to the consumer, so that a consumer does not place undue emphasis on the information. The readers of the BBB postings have to naturally assume the BBB follows somewhat objective and fair procedures for evaluating a business, otherwise the statements made by BBB would be meaningless. The BBB's definition of "report" one its website also make it to appear to the reader that some criteria are followed. Similarly, the BBB cannot say that that statement is true merely because it describes something that it did. Here, the BBB is more or less stating that AC violated a policy and it is making a public record of the violation. To the reader, who only reads about this violation and no other positive or negative event, the event is given undue emphasis. The reader is never told how long a company can have an unsatisfactory record or what can be done to correct it. The reader is merely told that AC has an unsatisfactory record. The BBB is reckless with regards to how much or how little an individual should weigh in this statement. The BBB does not state that AC cooperated with the BBB and, in communicating in good faith with the BBB in the interest in joining the organization, that AC shared information regarding its business. The reader is left to think that AC has an unsatisfactory record with the BBB, a negative connotation, and no discussion is given to the fact that after AC volunteered information and changed its website to accommodate the BBB, that the BBB would make a notation that AC has an "unsatisfactory record" and publish that message to the world.

Another reason why the "Third Complained of Statement" is untrue is that AC did modify, substantiate, and discontinue certain claims. AC removed all trademark and copyright references from its website. AC even contacted counsel for the BBB to make sure that all items were removed satisfactorily. The reader is left with the view that AC had some violations of BBB policy. The reader is not told that these alleged violations have been addressed, that AC was cooperative, or that the status of having an "unsatisfactory record" would change. In fact, more than ten months after any alleged TM symbols were used, the BBB posting still references the unsatisfactory record. The BBB was notified in writing that, in reference to the first request to change the trademarked or copyrighted information that "Those changes were all made as of

Thursday, 10-27-05 at 7:33 p.m. Please review the site to substantiate that these changes have been instituted. This is also verified on page two of Defendant's Exhibit A 17.

The Trademark claims have been a red herring since the first day. No conference attendee ever raised an issue as to the use of a copyright or trademark prior to the BBB's posting and because the postings were removed, no conference attendee has ever asked complained about purchasing the conference because of some belief that a catch phrase or methodology was the difference in choosing to attend an Advantage Conference event. The only person to ever complain about the copyright or trademark issue was a person affected by the BBB website. Her name is Zena Karelin and she complained after the BBB postings began. No person has ever complained that Advantage Conferences, LLC was using their name in using "Advantage Conferences," "Millionaire Mindset Conference" or "Millionaire Mindset Income Producing System." No conference attendee ever complained that they thought AC was a different organization and no competitor has asked AC to stop using any of the three previous phrases or names. Jim Hockert, an attorney, was originally contacted by AC about filing the trademarks. The BBB was not interested in learning of the trademarks actually owned by Advantage Conferences and its officers, such as the "Reverse Margins" trademark. The BBB suggested that it matters whether AC now pays to protect the phrase "Millionaire Mindset Income Producing System" even though the trademark symbols are not used. AC should not be obligated to now write a check to the Patent Trademark Office to purchase a phrase that it is now not using with the TM symbol.

40. The BBB argues that the earnings claims are unsubstantiated, but there is a fact issue and this matter cannot be resolved on summary judgment.

First, the BBB cannot attempt to "prove its statement substantially true" by arguing that AC needed to provide the names and addresses of ten individuals who have made "\$ 7,000 over and over and over again." This standard was arbitrarily made up by the BBB. It does not have the right to randomly makes its own parameters and guess how many individuals in an organization have to have sales in order to meet an advertising claim. This is especially true given the size of Advantage Conferences, LLC at the time that AC and BBB initially had contact. At the time of its initial dealings with the BBB, AC had 303 reps. A request that AC provide the names of 10 reps who made \$ 7,000 over and over and over again would require that 10 representatives each have six sales, since commissions of \$ 7,000 sales are only realized after a sales representative has shown that they can competently make three sales. In total, Mr. Burgess' request as a request that of the 303 representatives, that ten of them were responsible for 60 sales, or 20% of the total sales. That is a very difficult standard for any company to meet and Mr. Burgess' request that this number be satisfied to satisfy the BBB was arbitrary and unreasonable. I do not think that Mr. Burgess had the business acumen to understand that he was essentially setting up AC for an automatic failure in his mind, but if he can understand the math, he has to understand that his standard could only be satisfied if about 3 % of the reps (10/303) made 20% of the sales. This is especially difficult because his request also separately mandated that that these 3% of the reps have roughly even sales for his statistic to work. It was unfair of the BBB to pose such a difficult challenge at it was even worse for Burgess to call and try to contest all information with

every rep and to argue with the ten representatives. Second, AC provided ten names and addresses and it is believed that 9 of the 10 individuals did make "\$ 7,000 over and over and over again." Rather than seeing 5 or six names as a success, the BBB chose to view this as another failure. There was certainly an effort to substantiate and this effort was obviously not well received. Second, AC provided ten names and addresses of ten individuals and it is believed that all ten of those individuals made at least \$ 7,000 in commissions and that there are many individuals whose names were submitted who did make "\$ 7,000 over and over and over again," meaning six sales or \$ 21,000 on commissions from Conferences sales. A copy of the letter providing this information to the BBB is attached to my first Affidavit. I do know that I (Tim Darnell) made "\$ 7,000 over and over and over again." I have personal knowledge that many individuals made "\$ 7,000 over and over and over again," including Carrie Rasel, Don Goldstein, Matt Goldstein, Jack Weinzierl, Jim McHugh, Jim Wald, Tina Sturlaugson, and David Parnell. AC stopped using that phrase out of courtesy to the BBB, but the BBB would not update its findings. I also know that we have provided information to the BBB indicating that Rosa Shala of 2829 SE 38th St Ocala, FL 34480 has made "\$ 7,000 over and over and over again," so the BBB has known that ten people in fact meets its silly standard. The public is never alerted to this information and instead is told that the BBB is still reviewing the information. Ten phone calls could have established this fact. Rather than viewing the information that it received as success, the BBB chose to view this as another failure. There was certainly an effort to substantiate and this effort was obviously not well received, but the web posting gives no indication of this fact and portrays a very different and misleading picture.

I also want to say that I object to the inappropriate assertion that Jack Weinzierl makes and inappropriate earnings claims. All AC reps are trained as to what they can and can't say regarding sales and earnings. I do not know of any instances where Jack Weinzierl makes inappropriate, atypical earnings statements. Additionally, the elaborations discussed in Defendant's motion regarding earnings were not brought up to AC in the discussion of appealing the BBB and its standards and they should not be created after the fact as new reasons as to why the BBB thought that it told the truth ten months ago. Because the BBB never notified AC in the past that earnings statements needed a disclaimer and because issues relating to the alleged need for a "disclaimer" are not contained in the BBB Code of Advertising, the BBB should not now be allowed to "create" an advertising claim that it did not have in mind when it made its posting, that it did not claim in response to discovery, and that it did not, and does not have in its Code of Advertising. This discussion of "atypical earnings" never occurred until Defendant's motion and it should not be fabricated as a new reason why the BBB's posting was true.

41. The Fourth Complained of Statement is not substantially true.

Defendant identifies the Fourth Complained of Statement as:

Based on BBB files, this company previously had an unsatisfactory record with the Bureau due to failure to discontinue advertising claims. Specifically, on portions of its Web site the company used the term "copyright" and the symbol for "trademark" with the name "Millionaire Mindset Conference Income Producing System". However, the company stated the name was in fact not copyrighted or trademarked. The company has

recently modified its claims. On November 4, 2005 Bureau staff reviewed the site and confirmed the change had been made.

Because there is a very long discussion above indicating why this identical language is untrue, I respectfully requests that the Court cross apply AC's other arguments and the affidavit testimony dealing with the "no-evidence" summary judgment. Additionally, I must re-urge the view that these statements must be evaluated in the context of the entire posting.

The same issues as to the veracity of having an "unsatisfactory record" occur with the variation of this language, which states that the company "previously had an unsatisfactory language." Because the standard applied for a review of AC in mid October and AC tried in good faith to delete all trademark references by October 27, 2005, a statement that AC had an unsatisfactory record was defamatory. A true and correct copy of my letter to the BBB indicating that these references were deleted is attached to my first affidavit. The time period for any dissatisfaction was very short, there were no complaints on the content of the advertising posted, and AC was wholly cooperative. Still, the BBB chose to not only label the record as "unsatisfactory" but also to post it on the website. A consumer is misled if it believes that the record is unsatisfactory just because of practices that were discontinued, especially when the BBB did not separately "find" a violation. Instead, in communications surrounding membership to the BBB, the BBB requested information and requested changes, which AC made.

42. The Fourth Complained of Statement is not capable of defamatory meaning.

The BBB states that is hard to imagine how that compliance with the BBB's request can be understood in a derogatory manner. However, a statement of a prior unsatisfactory record is an acknowledgement of a deficiency of a business or an observation of a business' alleged shortcoming. Similarly, a statement of a prior unsatisfactory record is defamatory if the record is based upon the first time enforcement of a copyright and trademark policy that does not exist in the BBB's own Code of Advertising. AC seeks to once again be at the level of not only not having a satisfactory rating, but also not having a posting claiming a prior unsatisfactory rating. The BBB essentially made up a standard and violation and now allows it to linger on the BBB site. This, coupled with the other misstatements and defamatory language, add to the meaning in the overall context of the statement.

43. The Fifth Complained of Statement is not substantially true.

The BBB identifies the "Fifth Complained of Statement" as "...bureau has evidence that [AC] primarily engages in promoting a pyramid scheme."

First, Plaintiff again objects that this phrase should not be "cut out" off from the first statement as it appears and separately isolated outside of its context. The context of this

phrase is better understood when one reads the First Statement and Fifth Statement as they appear (right next to each other).

Combining the statements as they actually appear reads:

This company [AC] states on its website that it offers business training, motivational materials and conferences regarding an income opportunity. However, bureau has evidence that [AC] primarily engages in promoting a pyramid scheme.

Here, the obvious suggestion is that AC is promoting an income opportunity, but that the evidence before the bureau suggest that the income opportunity is a pyramid scheme. The obvious effect of this is that anyone interested in AC is tempted to run away. If a person is looking for a home based business and reads that a company primarily engages in promoting a pyramid scheme, we are lucky if the customer sends an email cancelling affiliation with AC. Most individuals who are confronted with rumors about someone else's illegal activity try to distance themselves from that other person or that business.

Plaintiff respectfully requests that all testimony, evidence, and arguments relating to the pyramid issue be cross applied to all arguments dealing with the meaning of any BBB posting mentioning the word "pyramid" or discussing "pyramid schemes." I have already spoken in great detail as to how both the FTC and the State of Texas have refused to prosecute cases against AC after complaints were initially made.

AC is not a pyramid because no purchase of the conference or business opportunity is required to be able to sell conference tickets. To sell a conference ticket, a rep needs to pay a \$ 59.95 independent contractor fee. If a rep sells three conferences, the rep is qualified to earn a commission for every sale after that point. There is no evidence countering this fact. AC simply will not require the purchase of a conference by a rep for a rep to benefit by selling a conference.

Additionally, it is important to emphasize that AC screens out individuals who are looking for a get rich quick scheme and that there are many individuals who wanted to purchase a conference ticket and sell conference tickets who were not allowed to do so.

There seems to be a big discussion about sales to nonrepresentatives. First the most promising and profitable products of Advantage Conferences, the Hidden Treasures and the Fundraising Advantage do not involve sales and resales. The same is true for the Virtual Vault, the personalized marketing website and other Advantage Conferences products. I have been told by many religious that they will not allow us to even approach the congregation about buying insurance to benefit themselves or the church until the BBB issues are resolved. I recently had this same discussion with the leader of the Cottonwood Creek Baptist Church. But for the BBB posting, I am unable to sell the Hidden Treasures and Fundraising Advantage products. I have personal knowledge that when the BBB posting issues are resolved and the content of the site is changed that Advantage Conferences will make over \$ 10,000 off of this long term relationship. I have great rapport with the Church since it is my local parish and I am licensed to sell the

insurance project, but I cannot do so until the BBB website references to a pyramid are removed. Unfortunately, the members of the Church are also harmed because the Church and its congregation cannot take advantage of these products, which literally give something to a qualified elderly person for nothing for allowing a third party to take out insurance in that person.

Additionally, Advantage Conferences disputes the BBB's claims that it is not selling its products to individuals who are not interested in also participating in the business opportunity. Advantage Conferences does offer many sales to non representatives and has recently even done a mailer to 2,000 prospective conference attendees without offering them the opportunity to share in the business opportunity. A true and correct copy of the mailer is attached as Exhibit D. These mailers come with a customer order form that is available only to conference attendees, meaning individuals who are attending the conference or enjoying the product without becoming a sale rep. A true and correct copy of that form is attached as Exhibit E. AC is not interested in growing only the number of sales representatives. AC is about the message at the conferences and the business is currently more focused on selling conference tickets to individuals who will not be sales representatives and attempting to promote its insurance product "Hidden Treasures."

I specifically deny any statement suggesting that the Advantage Conference product does not have value. The attendance at the conferences is the motivation in purchasing the product and the vast majority of all purchasers attend the next available conference. It is inappropriate for the BBB to focus on one aspect of the business that was used to create a solid base of over three hundred sales representatives and to pretend that the customers are not satisfied with the conference, the personalized marketing website, the Virtual Vaults, the Hidden Treasures, the Fundraising Advantage or any other products.

I also take issue with any statements of Jon Taylor. He is not an attorney and he is not an expert on the law. He is not versed with the Texas requirements in the anti-pyramid statutes and offered no reason as to why AC would be violating Texas law. He has never been to Texas to visit AC. He has never discussed the AC products with anyone at AC and he has never reviewed the AC products. He only reviewed materials on the web and then came to his own conclusions.

The Fifth Complained of Statement is actionable. Although the BBB may be claiming to express an opinion as to whether AC is conducting a pyramid, merely by mentioning that AC "primarily engages in promoting a pyramid scheme" the BBB is suggesting to the world that AC is engaging in promoting a pyramid scheme. A fair reading of this text is that the BBB is stating that AC is promoting a pyramid scheme. The statement is not true and is highly defamatory, whereas it suggests that AC is engaged in illegal activities. Everyone knows that pyramid schemes are illegal and that it is inflammatory to suggest otherwise.

44. The Sixth Complained of Statement is not substantially true.

The Sixth Complained of Statement reads, "In October of 2005, the Bureau questioned the company with evidence that it was primarily promoting a pyramid scheme through its website when Bureau staff reviewed the site www.advantageconferences.com on October 25, 2005. The Bureau asked for a statement from the company as to why it is not conducting a pyramid scheme."

I respectfully requests that all my prior testimony, evidence, and arguments relating to the pyramid issue be cross applied to all arguments dealing with the meaning of any BBB posting mentioning the word "pyramid" or discussing "pyramid schemes".

The Sixth Complained of Statement is not true. Although it is accurate to state that there was a discussion whereby the BBB accused AC of being a pyramid and AC denied such accusations and provided information, the statement by the BBB does more than provide a cursory history of the communications of the parties. The statement suggests that there is credible evidence that AC was promoting a pyramid scheme and it suggested that AC needed to defend its business model and explain to the BBB why it was not conducting a pyramid scheme. I deny that the BBB has any evidence that AC is promoting a pyramid scheme. The BBB had an unfounded suspicion that it refused to let go of in spite of all of the evidence and the BBB chose to broadcast its suspicions regardless of the outcome of its investigation. Christopher Burgess testified that he only visited the FTC and AG website before labeling AC a pyramid.

Advantage Conferences, LLC disputes that there is any evidence that it is actually promoting a pyramid scheme or violating the law. Everyone knows that pyramid schemes are illegal. The statement suggests that me (Tim Darnell) and other officers or affiliates of Advantage Conferences, LLC are conducting criminal acts. No deposition statement should be misinterpreted to suggest that anyone in AC believes that the BBB has any credible evidence that AC is conducting a pyramid scheme. Broadcasting suspicions, especially when they are not supported by the evidence, is highly inflammatory.

The statement is the same as stating that the BBB contacted AC with evidence that AC was guilty of bribery, tax evasion, fraud, assault, or mismanagement. Additionally, the statement appears as if the BBB has tangible, credible evidence that AC is a pyramid without noting the the quality and nature of the "evidence that [AC] was primarily promoting a pyramid scheme." At the time of the original publication, the only data reviewed by the BBB was its website, accordingly, any testimony regarding representations by AC other than the evidence reviewed by Mr. Burgess at the time should be the only evidence reviewed in determining whether AC is conducting a pyramid scheme. There is no evidence on the AC website that it is promoting a pyramid scheme. It is fundamentally misleading to have a statement suggesting that there is evidence of a crime or an ongoing criminal enterprise when the local state and federal authorities do not come to the same conclusion. It is defamation per se. The suggestion from the BBB posting is that there is something illegal, unethical, questionable, or not financially sound occurring at AC. Stating that there is evidence of a crime or unethical

behavior when there is no legitimate government agency that believes that a crime is ongoing is stating a statement that is untrue.

Additionally, it is worth noting that neither the FTC nor the Attorney General of the State of Texas have prosecuted AC for allegedly being a pyramid scheme. Christopher Burgess of the BBB testified that he contacted the FTC and the Attorney General of the State of Texas regarding AC in October, 2005. Because AC is fully compliant with the law, neither the state nor the federal government has decided to prosecute AC for any alleged pyramid law violations. As the President of AC, I know of know criminal cases against AC or its officers and I have no personal knowledge of any ongoing activities of the FTC or the Attorney General that even remotely suggest that AC has unfair trade practices or is conducting a pyramid scheme. Zena Karelin, a former Advantage Conferences pro-representative who actually earned a \$ 500 commission from Advantage Conferences and attended many \$ 7,000 calls early later read the BBB posting and used it as an excuse to demand a refund with AC and ultimately was paid \$ 1,500. She also contacted the Attorney General of the State of Texas. The Attorney General of the State of Texas did not prosecute AC and AC has never been the subject of any Attorney General or FTC criminal proceeding. The BBB simply did not have the privilege or right to suggest that AC was conducting a pyramid scheme, especially after it learned that the FTC and Attorney General of the State of Texas did not prosecute this case. Similarly, Jon Taylor also contacted the Attorney General of the State of Texas and several FTC offices. AC has not been prosecuted for any pyramid law violations. The BBB is aware of this information and it should have been more responsible before coming to a unilateral decision and pretending that it is true. These statements can also be applied to my discussion below as to the evidence that the BBB acted with malice.

45. The Seventh Complained of Statement is not substantially true.

Defendant states that the Seventh Complained of Statement is "In October of 2005, the Bureau questioned the company as to whether its marketing program is a pyramid. The company has provided information which the BBB is reviewing."

This statement is not substantially true. The statement, when read, suggests that the bureau had a good faith reason for questioning whether the marketing program is a pyramid. The second statement suggests that AC provided information that the BBB is reviewing the data or conducting some sort of investigation of the data. This is not true. Outside of its attorneys who are preparing defending a defamation case, there is no good faith review of data submitted by AC. According to the BBB, "The BBB then turned its investigation over to its attorneys and the discovery process." See Defendant's Motion at p. 12. That statement is in direct contrast with the meaning that a typical reader might have, which is that there is so much evidence or the pyramid issue is so complicated that it could take almost a year to investigate it. The statement is also false because a review was never completed. The statement exists on the webpage today. The readers of the postings in November, 2005 were misled into thinking that there would be a review of the AC materials and a decision would be made. In fact, Mr. Burgess of the BBB testified

that his investigation of AC lasted less than forty hours and mainly consisted of a review of a web site. A correct statement would read:

"An officer and employee of the BBB's, who had no prior knowledge of pyramid schemes made a unilateral decision that AC was conducting a pyramid scheme. He received some information from AC, made a few phone calls, and reviewed the internet. The information provided by AC has been reviewed for ten months and the BBB is not likely to ever finish this review, in spite of receiving over 7,000 pages of documents in discovery." There is no discussion that the BBB received the information and that it has been basically sitting on it for a long period of time.

The effect of the above statements is that the ordinary reader realizes that an October 2005 investigation into possible criminal activity occurred and that the reader does not have to continue reading on. The shadow of credibility and doubt are already cast over AC. The gist of the report is not that the BBB questioned AC about whether its marketing plan is a pyramid; the gist of the report is that the BBB is telling third parties that the BBB is at least not sure whether AC's marketing plan is a pyramid. In fact, coupled with the other statements, the overall negative impression of AC's business is solidified. A reasonable person is free to conclude that there is an investigation into pyramid allegations or that AC did not have a sufficient response to satisfy the BBB and that individual is not likely to come back to AC.

46. The common interest privilege/qualified privilege and other privileges should not apply in this case.

The BBB cited other cases where it has convinced other Courts outside of this jurisdiction that the common interest privilege should apply to its postings; however, the facts here do not give rise to a privilege. In this case the BBB had no duty to communicate information regarding AC, other than duty to communicate accurate information, so the issue is whether the speaker (BBB) has a common interest with another person. The affidavit of Christopher Burgess is very broad and erroneously appears to suggest that any reference to any posting on the BBB website automatically triggers a privilege. I dispute these assertions. The mere fact that someone searches AC on the BBB website is insufficient to determine whether the BBB had a common interest in sharing all of its unsubstantiated statements. It cannot be the case that anyone who searches a BBB posting has a common interest in all of the statements shared by the BBB. The common interest has to be determined by the individual needs of the web surfer. A BBB web surfer may only have the interest in obtaining contact information or other information regarding a company. After the trademark and copyright references were deleted, no BBB web surfer had a common interest in hearing of alleged past violations of the advertising policy. Additionally, prior to the AC posting, the Dallas BBB never posted an advertising violation or a reference to a pyramid scheme, so an assertion that the BBB has a common interest in posting that type of information is erroneous.

The same facts and arguments apply to an assertion of constitutional or statutory privilege. Whether ten individuals made "\$ 7,000 over and over and over again" is not a

matter of a public concern, it was a standard made up by Mr. Burgess of the BBB; the same is true for the unprecedented "unsatisfactory" rating for the advertising issues.

47. AC is not a public figure.

There is not a public controversy surrounding AC and pyramid schemes. Prior to the BBB posting other websites only minimally suggested that AC was a pyramid and other threads did not discuss AC's business in that manner. In fact after the BBB allowed its posting to occur, then other websites began cutting and copying the BBB posting and discussing it on their website. The BBB is aware that other websites view its claims as claims from a sincere, reputable third party, so the BBB is aware of the consequences of its posting. The BBB can not raise this issue by creating the controversy. The pyramid controversy was not within the context of AC. AC had a right to address the pyramid issue in detail after the BBB's erroneous postings and such discussions within its ranks did not make it rise to the status of a public official.

AC has only a trivial role in the "pyramid" controversy. AC has purposefully created a business that complies with Texas and federal law. AC offers many products, including two day conferences, websites, and insurance packages by licensed representatives. The Hidden Treasures insurance package is one such product. The website sales are in no way affiliated with reselling websites or having the ability to sell websites to third parties. With it, AC reps who receive their insurance license are able to sell insurance products. To date, over sixty representatives have obtained their insurance license to sell this product. In order to sell the AC product, an individual must only pay the \$ 59.95 independent contractor and processing fee. The purchase of any AC products is not required if an individual wants to participate in the income opportunity. The conferences are independent of the income opportunity. The conferences feature many actual millionaires to offer mentorship and business training that is in no way related to the income opportunity. The speakers at the conferences do not give lectures about the income opportunity or how to succeed with the income opportunity. Conversely, the speakers do discuss other lessons learned in business.

Additional conferences are available to reps for a discounted price and are not sold with any motivation directed to the income opportunity. This is full compliance with the anti pyramid statute located in the Texas Business and Commerce Code. AC has no means of attempting to counteract the information presented by the BBB. AC does not have access to the names and addresses of the individuals affected by the BBB posting. AC hired a public relations rep, but that public relations rep was never hired to address "pyramid" issues and AC stopped using its services soonafter.

48. Plaintiff has demonstrated that the BBB acted with malice.

Plaintiff has demonstrated sufficient evidence of malice. I ask that the Court consider all of the evidence on file relating to the malice of the BBB. The BBB knew that the information regarding Claudia Cawley was misleading and they were provided with the information regarding the true President of All-Star Entrepreneur, LLC before

Plaintiff filed suit. Even after Plaintiff filed suit, and as recently as September 18, 2006, the BBB continued to use the information suggesting that Tim Darnell is the President of All-Star Entrepreneur, LLC. The BBB continued to use this information even after being supplied with a copy of the Texas Secretary of State documents indicating that Tim Darnell is not the President of All-Star Entrepreneur, LLC. There was no good reason for Mr. Burgess or the BBB to disregard this information and there is no reason for this erroneous information to then be placed next to a statement suggesting that Tim Darnell was the last President of All-Star Entrepreneur, LLC when it went out of business. In fact, the opposite is true. The BBB filed its own document in support of summary judgment referencing the All-Star Entrepreneur, LLC bankruptcy, which was filed by Claudia Cawley. This means that the BBB had its own second independent source of information that the current posting is not true. This information is contrary to the assertions in Mr. Burgess' affidavit that he thought that the statements were true at the time of publication. Since the time of publication is ongoing, this information needs to be evaluated in terms of all of the information that Mr. Burgess is imparted with having knowledge of now. The conflicting information relating the all of the above issues establishes that Mr. Burgess knew of the conflicting information and chose to disregard it. This evidence establishes that the BBB and Mr. Burgess did know of many reasons to believe that the information he posted was not accurate, but he posted it anyway. He should have entertained doubts that the information he posted was truthful and not misleading. Mr. Burgess' desire to harm AC is also evidenced by his activities (contacting the FTC before speaking with AC, requesting information under the guise that AC could still become a BBB member, etc.). The information was not given to the consumers to exercise their best judgment. In fact, the consumers have never been told significant pieces of information, such as the information about All-Star's presidents. The affidavit of Christopher Burgess never established what facts on the State of Texas Attorney's website made him believe that AC was a pyramid scheme. Additionally, Mr. Burgess never took the time to examine any of AC's products. This information is necessary to determine whether AC is a pyramid. Mr. Burgess cannot claim to "misunderstand ambiguous facts," since there is direct, conflicting evidence available to him. The testimony of Mr. Burgess that he was fulfilling his organization's purpose cannot be right, since the BBB does not have an interest in failing to disclose to applicants that it is gaining information for them and contacting the authorities under the guise of a dialogue prior to BBB membership.

Christopher Burgess conducted a one-sided investigation and did not want to collect data when that data suggested that Advantage Conferences, LLC was a legal business. He would not allow AC reps to respond to questions if he did not like the answer that he was receiving. Christopher Burgess knew that his standard of requiring ten names of individuals who made "\$ 7,000 over and over and over" again was capricious and yet he chose to publish that standard on the internet as if it was not.

The BBB was well aware of the consequences of its posting. The BBB was contacted directly by individuals who read its website and thought that the BBB was stating that AC was conducting a pyramid scheme, such as Michael White and Zena

Karelin. The BBB was also contacted by AC's attorney who, through numerous letters complained of the effect of the postings and why the postings were misleading.

The BBB is aware that other than its legal defense, that there is no more review of the AC products and it continues to suggesting that it is reviewing the materials submitted by AC. The BBB is aware that all of these statements cast doubt upon Plaintiff. The BBB knows from the depositions that noticed in two far away cities that Zena Karelin and Michael White chose not to affiliate with AC after reviewing the BBB site and that they together demanded and received \$ 8,500 from AC. There were also losses associated with another individual named Michael Ponder. We will lose all the future sales of Michael Ponder because he will no longer sell for us. The BBB knew about these actual contracts because these individuals contacted the BBB. The BBB knew about AC's loss of Gregg Poffenbarger as a sales representative, because the BBB was given a copy of his name and address while he was a representative and before he stopped selling AC products, causing prospective business losses.

The malice is also established by the fact that the BBB had already called the State of Texas Attorney General and the FTC before requesting that AC submit additional information for its membership. In fact, Christopher Burgess wrote the letter to Advantage Conferences, LLC even after he personally wrote "no" on the AC membership application, which indicated that he was not going to let AC into the BBB. A true and correct copy of this document is attached to the deposition of Christopher Burgess as Defendant's Exhibit A 13. On the top right corner, you can see the word "no," along with Mr. Burgess' initials and a date of October 21, 2005. At this point, one has to question why the BBB would write a letter to AC asking for additional information regarding a membership application when the possibility was closed. Defendant's Exhibit A 14 is a true and correct copy of the letter from the BBB written on October 26, 2005 by Mr. Burgess which insincerely suggests that AC provide additional information because the membership decision was being deferred. Even though the BBB has knowledge that the State of Texas Attorney General and the FTC have not moved forward with its complaints, the complaints of Jon Taylor, or the pyramid related complaints of Zena Karelin, it continues to pursue its defamation.

Additionally, the above discussion of the "advertising claims" and the copyright trademark issue demonstrate that Mr. Burgess acted with malice and an intent to harm AC. Although the BBB could have kept the references to the "unsatisfactory record" off of its website, it chose to do so knowing that Mr. Burgess and the Dallas BBB never accused any other businesses of trademark or copyright violations and knowing that the BBB did not have a policy for this. Additionally, even after AC was working in good faith with the BBB and requested through its attorney that the BBB notify AC of any other trademark or copyright violations, the BBB did not respond and identify violations. Instead the BBB secretly kept printed out copies of obscure pages of the AC website that were thought to have additional copyright or trademark issues. A true and correct copy of this document is already on file as Defendant's Exhibit A 35.

On numerous occasions, the BBB chose to publish very ambiguous, misleading, untrue or equivocal statements when it could have just as easily portrayed a very different and truthful scenario by providing additional information, such as the fact that AC cooperated at all times, that AC was discussing membership with the BBB when it submitted its information, that the BBB has no copyright or trademark policy, etc. These were all made when Mr. Burgess and the BBB had knowledge of information contrary to what the BBB stated, but the BBB chose to publish the false information anyway. The BBB is aware that other websites view its claims as claims from a sincere, reputable third party, so the BBB is aware of the consequences of its posting.

Plaintiff incorporates its other testimony regarding the specific elements necessary for the other cause of actions. Because the cause of action of business disparagement will go to trial, the other cause of actions must also survive. Separately, I have already explained that the BBB was negligent in how it handled the information relating to the AC file. In short, it appeared to conduct an investigation when it really had an inexperienced person make a superficial judgment and stick with it. The public was told that there was an investigation of AC's data when more or less nothing happened. The public reasonably relied upon the BBB's representation because they come from a credible source and appear to be true, but the public's reliance upon the BBB's comments caused damages to AC in the form of diminished conference attendance, lost actual sales, lost prospective sales, and having to spend considerable time and money dealing with all of the BBB's statements.

Further affiant sayeth not.

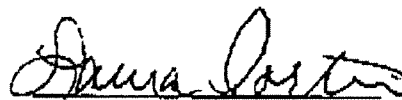


Tim Darnell

SUBSCRIBED and SWORN to before me on this 21st day of September, 2006 by Tim Darnell.

THIRD AFFIDAVIT OF TIM DARNELL




Notary Public
STATE OF TEXAS

THIRD AFFIDAVIT OF TIM DARNELL