

IN THE CIRCUIT COURT OF THE
15TH JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

CASE NO.

FRIENDFINDER NETWORKS INC.,

50 2009 CA 038741 XXXX MB

Plaintiff,

v.

GRANT THORNTON LLP, ELLIOT
FINDLAY, individually, and MENDY
KWESTEL, individually,

Defendants.

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COMPLAINT

Plaintiff, FRIENDFINDER NETWORKS INC. (referred to herein as "Plaintiff"), by and through undersigned counsel, hereby sues the Defendants, GRANT THORNTON LLP, ELLIOT FINDLAY, individually, and MENDY KWESTEL, individually (all of which are referred to herein by individual name, or collectively as "Defendants"), and alleges:

GENERAL ALLEGATIONS

The Parties, Jurisdiction and Venue

1. This is an action for damages which exceed \$15,000.00 and is within the jurisdiction of this Court.
2. The Plaintiff is a foreign corporation authorized to do business and doing business in Palm Beach County, Florida.¹
3. The Plaintiff's principal place of business is in Palm Beach County, Florida.

¹ The Plaintiff was formerly known as Penthouse Media Group Inc., but changed its name to FriendFinder Networks Inc. on July 1, 2008.

FRIENDFINDER NETWORKS INC. v. GRANT THORNTON LLP, et al.
Complaint

4. The Defendant, GRANT THORNTON LLP (“GRANT THORNTON”) is a limited liability partnership authorized to do business and doing business in Florida as a public accounting firm.

5. The Defendant, ELLIOT FINDLAY (“FINDLAY”), is over the age of 18 years old and otherwise *sui juris*.

6. At all material times herein, FINDLAY was employed by GRANT THORNTON as a certified public accountant.

7. The Defendant, MENDY KWESTEL (“KWESTEL”), is over the age of 18 years old and otherwise *sui juris*.

8. At all material times herein, KWESTEL was employed by GRANT THORNTON as a certified public accountant.

9. The Defendants are subject to the jurisdiction of this Court pursuant to Florida Statute §48.193(1)(a) because the causes of action alleged herein arose out of the Defendants operating, conducting, engaging in, or carrying on a business or business venture in this state or having an office or agency in Florida.

10. Additionally or alternatively, the Defendants are subject to the jurisdiction of this Court pursuant to Florida Statute §48.193(1)(b) because the causes of action alleged herein arose out of the Defendants’ commission of a tortious act within Florida.

11. Additionally or alternatively, the Defendants are subject to the jurisdiction of this Court pursuant to Florida Statute §48.193(1)(f). The Defendants caused injury to the Plaintiff within Florida arising out of an act or omission by the Defendants outside of Florida and, at the time of the

FRIENDFINDER NETWORKS INC. v. GRANT THORNTON LLP, et al.
Complaint

Plaintiff's injury, the Defendants were engaged in solicitation or service activities within Florida.

12. Additionally or alternatively, GRANT THORNTON is engaged in substantial and not isolated activities in Florida and therefore, subject to the jurisdiction of this Court pursuant to Florida Statute §48.193(2).

13. Venue is proper in Palm Beach County, Florida because that is where the causes of action alleged herein accrued.

FACTUAL BACKGROUND

14. The Plaintiff is currently a leading internet-based social networking and multimedia entertainment company that operates several of the most heavily visited social networking websites in the world.

15. Instrumental to its growth was the acquisition of the company known as Various, Inc., a California corporation, and its subsidiaries and certain related affiliates (collectively "Various"). Interactive Network, Inc., a Nevada corporation, and a wholly-owned subsidiary of the Plaintiff ("INI") acquired Various on December 6, 2007.

16. Various, directly and through its subsidiary and affiliated companies, was a world-wide online personals and social networking business that provided services to millions of members in many countries throughout the world.

17. The purchase price for Various was \$500 million.

18. In connection with the Various acquisition, the Plaintiff engaged the international accounting firm, GRANT THORNTON, to conduct financial due diligence on Various.

FRIENDFINDER NETWORKS INC. v. GRANT THORNTON LLP, et al.
Complaint

19. GRANT THORNTON markets itself and their professionals as experts in the field of financial due diligence, and recognizes that the aim of providing such a service is to ensure that the seller of a company (or its assets) has presented an accurate financial image of the interest being sold.

20. Within its assorted marketing material, GRANT THORNTON acknowledges that a proper financial due diligence ensures for the purchaser of a business or the assets of a business that the seller has properly handled and accounted for income tax and other taxes and duties, including value added taxes, or VAT.

21. In 2003, the European Union ("EU") implemented rules requiring the collection and payment of VAT on revenues generated by non-European businesses for providing electronic services that end-users consumed within the EU. These rules require VAT to be collected and remitted for products and services delivered over electronic networks, including software and computer services, as well as information and cultural, artistic, sporting, scientific, educational, entertainment and similar services.

22. With the implementation of these new EU rules, certain EU member states required that Various collect and remit VAT on services rendered to customers within these certain EU member states.

23. Despite these EU rules, Various never collected and remitted any VAT on any services rendered to customers within those certain EU member states requiring it. As a result of Various's failure to collect and remit the required VAT, certain financial and other representations of Various which were given by Various to the Plaintiff were materially inaccurate. The analysis,

FRIENDFINDER NETWORKS INC. v. GRANT THORNTON LLP, et al.
Complaint

review and consideration of these representations of Various, which turned out to be materially inaccurate, were included within the financial due diligence which was to be conducted by GRANT THORNTON.

24. GRANT THORNTON markets itself and their professionals as experts on VAT and VAT-related issues.

25. The Plaintiff retained GRANT THORNTON to conduct financial due diligence on April 16, 2007. The engagement included, but was not limited to analyzing Various's financial statements and overall operations to assess its quality of earnings for the years 2003 through September 2007. The retention necessarily included identifying potential risks to which Various is or could be exposed that would impact future earnings, as well as consideration of adjustments or "add-backs" that were made or which needed to be made to historical earnings to make them accurate.

26. KWESTEL and FINDLAY were the lead accountants at GRANT THORNTON charged with conducting this due diligence on Various.

27. The Defendants' financial due diligence investigation lasted approximately seven (7) months, after which time the Defendants issued their final Financial Due Diligence Report on November 18, 2007 (the "Report").

28. In its Report, the Defendants failed to account for any VAT liability to Various resulting from its failure to collect and remit VAT associated with purchasers located within the EU.

29. At no time during its retention did GRANT THORNTON, or any of the Defendants, ever discuss with the Plaintiff, or bring to the attention of the Plaintiff, the 2003 EU rules and

FRIENDFINDER NETWORKS INC. v. GRANT THORNTON LLP, et al.
Complaint

regulations regarding the collection and remittance of VAT, or the import and effect on the representations of Various as a result of Various's failure to collect and remit VAT.

30. The Plaintiff relied on the Defendants' Report when approving INI's acquisition of Various. The deal closed on December 6, 2007 for the agreed price of \$500 million.

31. Months after the acquisition, in late May 2008, the Plaintiff learned for the first time that Various had not collected or remitted any VAT from purchasers in the EU tax jurisdictions requiring it.

32. As a result of (i) the failure of Various to collect and remit the VAT required under the 2003 EU rules with respect to certain of the assets owned by Various and included within Various's business operations and (ii) INI's December 6, 2007 acquisition of Various, the total potential EU VAT exposure, including penalties, late fees and interest from applicable EU jurisdictions imposing VAT was approximately \$83 million.

33. Upon being advised of this VAT liability and exposure in May 2008, the Plaintiff hired independent legal, accounting and other professionals to analyze and address the VAT and associated fines, interest and late fees imposed by each of the EU countries. As a result of the efforts of these legal, accounting and other professionals, the Plaintiff currently has been able to reduce the total EU VAT liability to approximately \$38 million.

COUNT I - ACCOUNTING MALPRACTICE

34. The Plaintiff readopts and realleges paragraphs 1 through 33 as though fully set forth herein.

FRIENDFINDER NETWORKS INC. v. GRANT THORNTON LLP, et al.
Complaint

35. The Defendants, GRANT THORNTON, KWESTEL and FINDLAY, owed certain duties, including a fiduciary duty, to the Plaintiff to conduct the financial due diligence of Various for which GRANT THORNTON was retained, in accordance with the prevailing standards of care for accounting professionals in the community.

36. In connection with these duties , and as part of the scope of the retention of GRANT THORNTON in April of 2007, the Defendants were obligated as part of their financial due diligence to address with both the management of Various and with the Plaintiff (i) the fact of the 2003 EU requirements regarding VAT on any services rendered to customers within those certain EU member states requiring it, (ii) whether Various had complied with the 2003 EU requirements regarding VAT, and (iii) the material import on certain of the representations of Various, including the effect on Various's quality of earnings provided to the Plaintiff prior to the December 6, 2007 acquisition as a result of Various's failure to collect and remit VAT as required by the EU 2003 rules.

37. During the material times from the April 2007 retention of GRANT THORNTON up through the closing on December 6, 2007, and thereafter, the Defendants knew or should have known of the 2003 EU requirements regarding VAT on any services rendered to customers within those certain EU member states requiring it.

38. The Defendants breached their duties owing to the Plaintiff, including their duty to provide the financial due diligence within the prevailing standard of care, by carelessly and negligently failing to discover Various's obligation and failure to pay any VAT to the jurisdictions in the EU that required it. Further, the Defendants breached their duties owing to the Plaintiff by failing to advise the Plaintiff of Various's failure to pay the EU VAT and its material import on

FRIENDFINDER NETWORKS INC. v. GRANT THORNTON LLP, et al.
Complaint

certain representations of Various and the Seller Parties of Various², including the effect on Various's quality of earnings provided by Various to the Plaintiff.

39. Upon becoming aware of the VAT liability in May of 2008, as set forth within paragraph 31 herein, the Plaintiff made claims against the former owners of Various. In an attempt to mitigate its financial losses resulting from the failures of the Defendants as set forth within paragraph 38 herein, the Plaintiff and the former owners of Various entered into a settlement of the claims associated with Various's failure - prior to the acquisition in December 2007 - to collect and remit VAT as required by the 2003 EU rules.

40. If the Defendants had not breached their duties owing to the Plaintiff as set forth herein, and in fact had advised the Plaintiff either prior to the issuance of the Report on November 18, 2007, or as part of the Report, that Various had failed to collect and remit VAT and the import of such failure on the representations provided by Various to the Plaintiff, the acquisition would not have been completed on the same terms and conditions, including the purchase price and other financial terms and conditions.

41. As a direct and proximate cause of the Defendants' breaches of duty as set forth above, the Plaintiff has suffered compensatory damages in excess of \$50 million, as well as special damages in excess of \$50 million. The compensatory damages include, but are not limited to, overpaying the purchase price to the sellers of Various. The special damages are in excess of \$50 million and include:

² The "Seller Parties", as used herein, shall mean (i) The Andrew B. Conru Trust, established November 6, 2001, Andrew B. Conru Trustee, (ii) Mapstead Trust, established April 18, 2002, Lars and Marin Mapstead Trustees, (iii) Andrew B. Conru, an individual and (iv) Lars Mapstead, an individual.

FRIENDFINDER NETWORKS INC. v. GRANT THORNTON LLP, et al.
Complaint

- a. The liability to pay VAT which was not paid by Various prior to the acquisition in December of 2007, such liability currently appears to be in excess of \$38 million;
- b. The cost of the funds to pay the VAT liability;
- c. The Plaintiff's loss of the use of the funds necessary to pay the VAT liability;
- d. The Plaintiff's significant financial losses proximately caused as a result of the delay in the Plaintiff having the ability to offer stock to the public after the acquisition due to the assorted legal and financial issues that arose respecting the VAT liability;
- e. The increased fees and costs associated with the recent Form S-1 Registration Statement filed by the Plaintiff as a proximate cause of having to address and pay the VAT liability;
- f. The costs and expenses incurred by the employees of the Plaintiff that have had to devote their time and effort on addressing the VAT liability, which time, effort, costs and expenses would not have been incurred if the Defendants had not breached their duties owing to the Plaintiff;
- g. The lost opportunities for the Plaintiff to be in other investments and transactions which were lost due to the cost, time and effort expended by the Plaintiff and its employees and agents addressing the VAT liability and the impact of the Defendants' breaches of duties and mitigating the damages caused by such breaches;
- h. All of the fees and costs, including, but not limited to, the fees and costs for legal, accounting and other professional services, which the Plaintiff has incurred in addressing the VAT liability with the various EU jurisdictions which required the collection and remittance of VAT as part of the EU 2003 rules;
- i. All of the fees and costs, including, but not limited to, the fees and costs for legal, accounting and other professional services, which the Plaintiff has incurred in attempting to mitigate its damages;
- j. Payment of lender fees resulting from the Defendants' breach, including legal and accounting fees associated with those lender fees; and
- k. All applicable interest, late fees and penalties associated with the VAT liability.

FRIENDFINDER NETWORKS INC. v. GRANT THORNTON LLP, et al.
Complaint

WHEREFORE, Plaintiff demands judgment for damages against the Defendants, jointly and severally, together with costs, interest and all other relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

The Plaintiff demands trial by jury of all issues so triable.

Dated: November 17th, 2009.

SEIDEN, ALDER, MATTHEWMAN & BLOCH, P.A.

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