

# EXHIBIT A

12           4.     During the week of January 28, 2008, Adam Frank, Kirk Sanford, Lanis  
13 O'Steen and Jerry Kramer resigned from the Debtor's Board of Directors. Michael Levy  
14 and I are the remaining members of the Debtor's Board of Directors.

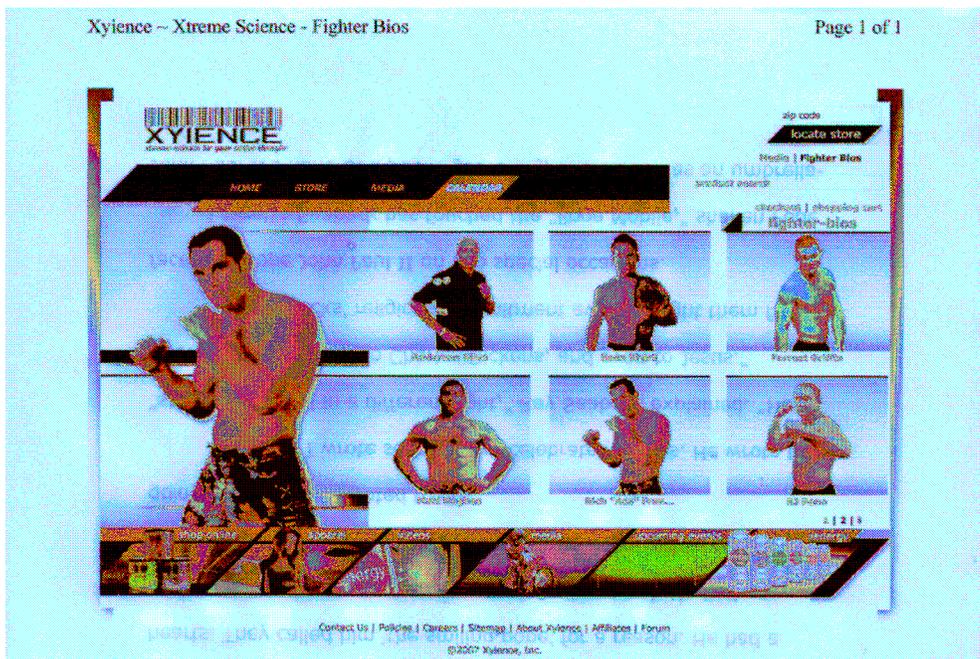
15           5.     On the Petition Date, the books and records of Xyience reflect that 432  
16 persons and entities own stock in Xyience. *See* Petition, Docket 1, List of Equity Security  
17 Holders. Based upon the 2005 and 2006 conduct of Russell Pike and then management  
18 of Xyience which resulted in entry of a September 10, 2007 Desist and Refrain Order by  
19 the California Department of Corporations, Exhibit A, regarding the improper solicitation  
20 and sale of 1,541,667 shares at a cost of \$2.1 million to California residents, Xyience has  
21 serious questions and concerns about the accuracy of its books and records with respect to  
22 the issuance of stock and the identity of its existing shareholders, as well as persons or  
23 entities who claim to own stock in Xyience.

24           6.     In November of 2007, certain shareholders submitted a request for  
25 information to Xyience through their legal counsel, Daniel Newman of Broad & Cassel of  
26 Miami, Florida. On November 29, 2007, Xyience provided Mr. Newman with

1 documents responsive to his request for information. The documents provided to Mr.  
2 Newman contained financial data, including budgets, projections and historical financial  
3 documents; detailed records regarding the issuance of stock, identity of shareholders,  
4 stock and options; and corporate books and records, including documents filed with the  
5 Nevada Secretary of State, articles, bylaws and corporate minutes.

SEE SCHEDULE 7(f) and 8(e) in Zyen,  
LLC October 4, 2007  
Convertible Senior Secured Note AND  
RELATED DOCUMENTS (Part 4)

**EXHIBIT 26**

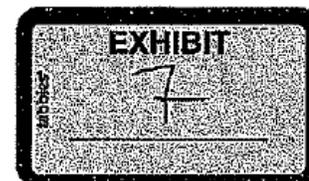


Compared with the list of creditors and contracts filed into this case, the above page does not wash at all with the actual state of the company. All of these fighters are no longer being sponsored by Xyience and have not been paid, yet Xyience refuses to fix the page. Over 208 creditors are listed for this case, including all the depicted fighters above and other Xyience sponsored fighters stiffed on final payments. The list of creditors covers every letter of the alphabet with the exception of the letters X and Y.

**Avience Inc**  
**Outstanding Options/Warrants (including employee options not yet granted)**  
**As of 9/10/07**

**(Unaudited)**

Name		Date of Grant	Expiration Date	Option Price	Shares	
UFC (warrants)	UFC	03-Jan-07	03-Jan-12	2.50	5,125,318	
Katie	Board Member	01-Jun-07	01-Jun-12	1.75	250,000	
Mike Kurdziel	Board Member	01-Jun-07	01-Jun-12	1.75	250,000	
Adam Frank	Board Member	01-Jun-07	01-Jun-12	1.75	250,000	
Kirk Sanford	Board Member	01-Jun-07	01-Jun-12	1.75	250,000	
William Underhill	Board Member	01-Mar-07	01-Mar-12	1.75	250,000	
Janet Hall	Board Member	01-Mar-07	01-Mar-12	1.75	250,000	
Gregory DeStefano	Consultant	17-Dec-06	17-Dec-16	2.50	40,000	
Kirk Sanford	Consultant	21-Mar-07	21-Mar-12	2.50	750,000	
Adam Frank	Consultant	21-Mar-07	21-Mar-12	1.75	500,000	
Tony Berger	Consultant	01-Jun-07	01-Jun-12	1.75	500,000	Marketing
Wilson Chueira	Consultant	12-Jun-07	12-Jun-12	1.75	75,000	Sales Supplemen
Jill Benedict	Consultant	01-Jun-07	01-Jun-12	1.75	200,000	Marketing
Laura Heyden	Consultant	12-Jun-07	12-Jun-12	1.75	60,000	Admin assistant
Ray Wetzel	Consultant	01-Jul-07	01-Jul-12	1.75	80,000	Sales consultant
Paul Grady (disputed)	Employee	31-Aug-07	31-Aug-10	1.00	1,500,000	
Terrence O'Leary	Employee	22-Jun-07	22-Jun-17	1.75	60,000	
Devin Keays	Employee	17-Jul-07	17-Jul-17	1.75	75,000	
Angela Hunter	Employee	22-Jun-07	22-Jun-17	1.75	25,000	
Nitasha Hall	Employee	22-Jun-07	22-Jun-17	1.75	10,000	
Jake Hatten	Employee	22-Jun-07	22-Jun-17	1.75	10,000	
Vicki DiBernardo	Employee	17-Jul-07	17-Jul-17	1.75	200,000	
Susan Curry	Employee	17-Jul-07	17-Jul-17	1.75	200,000	
Josh Danna	Employee	22-Jun-07	22-Jun-17	1.75	10,000	
Willie Marshall	Employee	22-Jun-07	22-Jun-17	1.75	10,000	
Susan Wierzbicki	Employee	22-Jun-07	22-Jun-17	1.75	25,000	
Jeffrey Martin	Employee	02-Jul-07	02-Jul-17	1.75	75,000	
Larry Pettis	Employee	02-Jul-07	02-Jul-17	1.75	75,000	
Dara Asuncion	Employee	22-Jun-07	01-Jun-17	1.75	10,000	
Michael Levy	Employee	17-Jul-07	17-Jul-17	1.75	200,000	
Darin Mahike	Employee	17-Jul-07	17-Jul-17	1.75	50,000	
Peejay Lamotte	Employee	22-Jun-07	22-Jun-17	1.75	10,000	
Stephen Smith	Employee	22-Jun-07	22-Jun-17	1.75	10,000	
Beau Christensen	Employee	22-Jun-07	22-Jun-17	1.75	50,000	
Tim Shackelford	Employee	02-Jul-07	02-Jul-17	1.75	25,000	
Tera Toadvine	Employee	31-Aug-07	31-Aug-17	1.75	10,000	
Ray Marquez	Employee	02-Jul-07	02-Jul-17	1.75	50,000	
Lindsey Jabs	Employee	02-Jul-07	02-Jul-17	1.75	10,000	
Herman Zuluaga	Employee	02-Jul-07	02-Jul-17	1.75	50,000	
Bill Coffey	Employee	02-Jul-07	02-Jul-17	1.75	10,000	
Paul Guyot	Employee	02-Jul-07	02-Jul-17	1.75	50,000	
Samuel Rodriguez	Employee	02-Jul-07	02-Jul-17	1.75	10,000	
Reuben Rios	Employee	17-Jul-07	17-Jul-17	1.75	150,000	
John Schmidt	Employee	02-Jul-07	02-Jul-17	1.75	25,000	
Cameron Rios	Employee	02-Jul-07	02-Jul-17	1.75	10,000	
Marconi Calderone	Employee	02-Jul-07	02-Jul-17	1.75	50,000	
Paul Sidorak	Employee	02-Jul-07	02-Jul-17	1.75	50,000	
Jane Stewart	Employee	02-Jul-07	02-Jul-17	1.75	25,000	
Lee Betzman	Employee	02-Jul-07	02-Jul-17	1.75	50,000	
Jeff Rivera	Employee	02-Jul-07	02-Jul-17	1.75	10,000	
Gregory Gottfried	Employee	02-Jul-07	02-Jul-17	1.75	10,000	
Robert Park	Employee	02-Jul-07	02-Jul-17	1.75	75,000	
Duane Tanner	Employee	02-Jul-07	02-Jul-17	1.75	10,000	
Tony Anselmo	Employee	02-Jul-07	02-Jul-17	1.75	50,000	
William Underhill	Employee	10-Mar-07	10-Mar-12	1.75	150,000	
William Underhill	Employee	01-Jun-07	01-Jun-12	1.75	200,000	
Janet Hall	Employee	10-Mar-07	10-Mar-12	1.75	150,000	
Janet Hall	Employee	01-Jun-07	01-Jun-12	1.75	100,000	
Timothy Olson	Employee	02-Jul-07	02-Jul-17	1.75	10,000	
Michael Rusnak	Employee	17-Jul-07	17-Jul-17	1.75	25,000	
Stephen Carpenter	Employee	02-Jul-07	02-Jul-17	1.75	25,000	
Christopher Keeler	Employee	02-Jul-07	02-Jul-17	1.75	25,000	
Jason Dunbar	Employee	02-Jul-07	02-Jul-17	1.75	25,000	
Keith Hickman	Employee	02-Jul-07	02-Jul-17	1.75	50,000	
Tom Samaha	Employee	02-Jul-07	02-Jul-17	1.75	10,000	
Jay Cwiek	Employee	02-Jul-07	02-Jul-17	1.75	25,000	
Rick Briley	Employee	02-Jul-07	02-Jul-17	1.75	50,000	
Tiffany Echols	Employee	22-Jun-07	22-Jun-17	1.75	10,000	
Nina Rodriguez	Employee	22-Jun-07	22-Jun-17	1.75	5,000	



**Kyience Inc.**  
**Outstanding Options/Warrants (including employee options not yet granted)**  
**As of 8/10/07**

(Unaudited)

Name		Date of Grant	Expiration Date	Option Price	Shares
Chad Lushin	Employee	02-Jul-07	02-Jul-17	1.75	10,000
Bryan Fortier	Employee	02-Jul-07	02-Jul-17	1.75	25,000
Jason Marks	Employee	02-Jul-07	02-Jul-17	1.75	50,000
Jessica Laulman	Employee	22-Jun-07	22-Jun-17	1.75	25,000
Siobhan Oldham	Employee	02-Jul-07	02-Jul-17	1.75	60,000
Randolph Sagon	Employee	31-Aug-07	31-Aug-17	1.75	25,000
Erle Hoffman	Employee	31-Aug-07	31-Aug-17	1.75	25,000
Eugene Tennison	Employee	31-Aug-07	31-Aug-17	1.75	10,000
Robert Fortier	Employee	31-Aug-07	31-Aug-17	1.75	10,000
Linda Raney	Employee	31-Aug-07	31-Aug-17	1.75	10,000
Greg King	Employee	31-Aug-07	31-Aug-17	1.75	10,000
Dennis Werner	Employee	31-Aug-07	31-Aug-17	1.75	25,000
Kavin Adams	Employee	31-Aug-07	31-Aug-17	1.75	25,000
Joseph Huntowski	Employee	31-Aug-07	31-Aug-17	1.75	10,000
Chris Theodorackis	Employee	31-Aug-07	31-Aug-17	1.75	75,000
Robert Arroyo	Employee	31-Aug-07	31-Aug-17	1.75	25,000
Thomas Leahy	Employee	31-Aug-07	31-Aug-17	1.75	25,000
Tony Ozel	Employee	31-Aug-07	31-Aug-17	1.75	10,000
Kenny Sanders	Employee	31-Aug-07	31-Aug-17	1.75	10,000
Jose Navarro	Employee	31-Aug-07	31-Aug-17	1.75	25,000
Jenna Carpio	Employee	31-Aug-07	31-Aug-17	1.75	10,000
Jill Pollard	Employee	31-Aug-07	31-Aug-17	1.75	25,000
Leo Garrido	Employee	31-Aug-07	31-Aug-17	1.75	10,000
Jason McLoone	Employee	31-Aug-07	31-Aug-17	1.75	10,000
Carlos Zuluaga	Employee	31-Aug-07	31-Aug-17	1.75	10,000
Jeanette Mersino	Employee	31-Aug-07	31-Aug-17	1.75	50,000
Abe Ibrahim	Employee	31-Aug-07	31-Aug-17	1.75	10,000
David Hauser	Employee	31-Aug-07	31-Aug-17	1.75	50,000
Brent Hayden	Employee	31-Aug-07	31-Aug-17	1.75	10,000
Laura Hayden	Employee	31-Aug-07	31-Aug-17	1.75	10,000
Wilson Chueire	Employee	31-Aug-07	31-Aug-17	1.75	75,000
Chuck Liddell	Fighter	01-May-06	Not stipulated	1.00	500,000
Chuck Liddell	Fighter	01-May-07	Not stipulated	1.00	500,000
Key Management (warrants)	Investor	21-Feb-07	Not stipulated	2.50	3,500,000
RVS Ventures	Investor	15-Mar-07	15-Mar-10	1.75	450,000
Daniel Levene (warrants)	Investor	23-May-07	23-May-12	6.00	175,000
Chris Pendrak (warrants)	Investor	23-May-07	23-May-12	6.00	10,000
William Brunner (warrants)	Investor	23-May-07	23-May-12	6.00	30,000
Paul Richardson (warrants)	Investor	23-May-07	23-May-12	6.00	175,000
Paul Chuzi (warrants)	Investor	23-May-07	23-May-12	6.00	25,000
Michael McDonald (warrants)	Investor	23-May-07	23-May-12	6.00	10,000
Loula Shineman (warrants)	Investor	23-May-07	23-May-12	6.00	40,000
Kirk Kubach (warrants)	Investor	23-May-07	23-May-12	6.00	25,000
Jere Matheny (warrants)	Investor	23-May-07	23-May-12	6.00	5,000
Erik Geneault (warrants)	Investor	23-May-07	23-May-12	6.00	5,000
William Zebe	Settlement	01-Jun-07	31-Dec-07	1.00	350,000
Jeff Dash	Settlement	01-Nov-07	01-Nov-09	4.00	250,000
Carol Brown	Settlement	16-Dec-06	16-Dec-16	1.00	100,000
Pete Rinato	Settlement	05-Apr-07	05-Apr-10	1.00	700,000
David Stewart (unsigned)	Settlement	22-Aug-07	22-Aug-09	1.00	350,000
Thomas Raepant	Settlement	12-Jan-07	12-Jan-17	4.00	10,000
Riley Judd (unsigned)	Settlement	31-Aug-07	31-Aug-09	4.00	125,000
Nathan Judd (unsigned)	Settlement	31-Aug-07	31-Aug-09	4.00	125,000
LJ Jones	Settlement	02-Aug-07	02-Aug-08	1.75	8,334
Brian O'Keefe	Settlement	10-Apr-07	10-Apr-17	4.00	100,000
Steven Pacitti	Settlement	27-Jul-07	27-Jul-10	2.50	100,000
Theodore Lanes	Settlement	06-Jun-07	06-Jun-12	2.50	62,500
				<b>Total</b>	<b><u>21,617,152</u></b>

Cert Number	Issued To	Share Issue Date	Consideration Type	New Issue	Shares Sold	Shares Acquired	Share Balance
<b>Shares Acquired</b>							
2	Russell and Jennifer Pike	24-May-04	Founder Shares	3,000,000	-	-	3,000,000
3	Russell and Jennifer Pike	24-May-04	Founder Shares	3,500,000	-	-	3,500,000
10	Russell and Jennifer Pike	30-Oct-04	Founder Shares	4,500,000	-	-	4,500,000
429	Russell and Jennifer Pike	23-Mar-07	Cash	140,000	-	-	140,000
11	Russell and Jennifer Pike	26-Apr-06	Private	-	-	3,300,000	3,300,000
	Russell and Jennifer Pike	20-Mar-07	Private	-	-	5,000	5,000
<b>Total Shares Acquired</b>				<b>11,140,000</b>	<b>-</b>	<b>3,305,000</b>	<b>14,445,000</b>
<b>Shares Sold</b>							
199	Talor Zamir	24-May-06	Private		(6,250)		(6,250)
208	LJG Asset Management	12-Jun-06	Private		(25,000)		(25,000)
212	Billy Chu	27-Jun-06	Private		(110,000)		(110,000)
213	Paul A. Walbrun	27-Jun-06	Private		(25,000)		(25,000)
223	Gary Northan	03-Aug-06	Private		(258,000)		(258,000)
227	Thomas A Curti P.C.	08-Aug-06	Private		(5,000)		(5,000)
228	Gregory R. Seifert Profit Sharing Plan	08-Aug-06	Private		(5,000)		(5,000)
229	Thomas & Lois Curti	08-Aug-06	Private		(5,000)		(5,000)
230	Joan & Anthony Myers	08-Aug-06	Private		(5,000)		(5,000)
231	Bret & Lavelle Johnson	08-Aug-06	Private		(5,000)		(5,000)
232	Bruce & Sheri Vincents	08-Aug-06	Private		(4,000)		(4,000)
233	Sharon Seifert	08-Aug-06	Private		(6,000)		(6,000)
234	Scott Gagliano	23-Aug-06	Private		(12,500)		(12,500)
235	David Lawenda	23-Aug-06	Private		(200,000)		(200,000)
269	Gregory R. Seifert	26-Sep-06	Private		(5,000)		(5,000)
270	Paul Walbrun	26-Sep-06	Private		(25,000)		(25,000)
275	Vince Miltello	04-Oct-06	Private		(12,500)		(12,500)
276	Robert Guarriello	04-Oct-06	Private		(12,500)		(12,500)
278	Henry Guarrillo	04-Oct-06	Private		(12,500)		(12,500)
274	Steve Irwin	12-Oct-06	Private		(10,000)		(10,000)
279	Jeffrey A. Feuer	18-Oct-06	Private		(12,500)		(12,500)
280	Trygve M. Thoresen	20-Oct-06	Private		(12,500)		(12,500)
281	Paul Walbrun	20-Oct-06	Private		(20,000)		(20,000)
285	Chester Jacobs &/or Kim Jacobs	26-Oct-06	Private		(28,572)		(28,572)
287	Karim Maskatiya	02-Nov-06	Private		(3,333,334)		(3,333,334)
288	Kirk Sanford	03-Nov-06	Private		(40,000)		(40,000)
289	Daniel Allen Lee Watson	06-Nov-06	Private		(2,500)		(2,500)
290	Jeffrey A. Feuer	06-Nov-06	Private		(3,750)		(3,750)
291	David Gary Swanson	06-Nov-06	Private		(25,000)		(25,000)
292	Dave Rineberg	06-Nov-06	Private		(12,500)		(12,500)
293	Guarniello-Meyer Partnership	06-Nov-06	Private		(12,500)		(12,500)
298	W.R. Underhill Family, LLC	17-Nov-06	Private		(20,000)		(20,000)
299	Paul Dino Bertuccini Family Trust	17-Nov-06	Private		(83,334)		(83,334)
300	John Bertuccini Trust	17-Nov-06	Private		(33,334)		(33,334)
301	Jamie & / or Valerie Barker	20-Nov-06	Private		(70,000)		(70,000)
303	Kyoung Hwa Lee	27-Nov-06	Private		(10,000)		(10,000)
304	Paul J. Bertuccini Family Trust	29-Nov-06	Private		(33,334)		(33,334)
316	Ron Schmit	15-Dec-06	Private		(15,000)		(15,000)
323	Patricia Barrera	19-Dec-06	Private		(3,000)		(3,000)
324	Thomas J. Nieva &/or Nancy E. Nieva	04-Jan-07	Private		(2,500)		(2,500)
325	Janine Hamilton	04-Jan-07	Private		(12,400)		(12,400)
326	Devin Keys	04-Jan-07	Private		(3,000)		(3,000)
327	Richard Quinonez	04-Jan-07	Private		(9,000)		(9,000)
331	Berkeley Partners, LLC	04-Jan-07	Private		(250,000)		(250,000)
332	RVS Ventures, Inc	04-Jan-07	Private		(125,000)		(125,000)
333	Dr. Edward Barrera	04-Jan-07	Private		(4,000)		(4,000)
366	Paul Hesselgesser	22-Jan-07	Private		(25,000)		(25,000)
367	Randy Gilbert	26-Jan-07	Private		(37,500)		(37,500)
391	Tamako Nelson	05-Feb-07	Private		(22,500)		(22,500)
	Russell and Jennifer Pike	05-Feb-07	Retired		(80,000)		(80,000)
402	jeffrey L. Buchanan	09-Feb-07	Private		(1,400)		(1,400)

403	Jeffrey L. Hurley	09-Feb-07	Private	(560)	(560)
404	Sandra Clarke Marriott	09-Feb-07	Private	(12,500)	(12,500)
405	Douglas Grant Marriott	09-Feb-07	Private	(12,500)	(12,500)
406	Bartholmew Donovan & Patricia Dey	09-Feb-07	Private	(25,000)	(25,000)
408	Jeffrey Tomasulo	07-Mar-07	Private	(8,000)	(8,000)
409	Fairway Holdings	07-Mar-07	Private	(25,000)	(25,000)
410	Conway Schatz	07-Mar-07	Private	(27,500)	(27,500)
411	Glen C Allen	07-Mar-07	Private	(12,500)	(12,500)
412	Maria Saavedra	07-Mar-07	Private	(5,000)	(5,000)
413	The Suarez Family Trust	07-Mar-07	Private	(21,000)	(21,000)
414	Berta Suarez	07-Mar-07	Private	(6,000)	(6,000)
415	Gilbert Saavedra	07-Mar-07	Private	(6,000)	(6,000)
416	Doug Chang	07-Mar-07	Private	(3,500)	(3,500)
417	Endalkachew Mersha	07-Mar-07	Private	(3,500)	(3,500)
418	Tamako Nelson	07-Mar-07	Private	(12,500)	(12,500)
419	RVS Ventures, Inc	07-Mar-07	Private	(250,000)	(250,000)
430	Paul J Bertuccini Trust	26-Mar-07	Private	(102,500)	(102,500)
431	The John Bertuccini Trust	26-Mar-07	Private	(127,500)	(127,500)
432	The Paul Dino Bertuccini Family Trust	26-Mar-07	Private	(127,500)	(127,500)
445	Dr John Bertuccini	13-Apr-07	Private	(13,750)	(13,750)
451	William B. Pike Jr.	16-Apr-07	Private	(1,500,000)	(1,500,000)
452	Robert Fulwider	20-Apr-07	Private	(12,500)	(12,500)
453	Direct Cash, Inc.	20-Apr-07	Private	(16,666)	(16,666)
455	The Koehler Family Trust	20-Apr-07	Private	(15,000)	(15,000)
456	Troy Gartrell	20-Apr-07	Private	(10,500)	(10,500)
528	All of US LLC	20-Apr-07	Private	(12,000)	(12,000)
463	Tamako Nelson	09-May-07	Private	(42,500)	(42,500)
471	Energy Drink Investor, LLC	16-May-07	Private	(23,000)	(23,000)
473	Gilberto Saavedra	22-May-07	Private	(2,727)	(2,727)
474	Maria Saavedra	22-May-07	Private	(3,727)	(3,727)
476	Doug Chang	22-May-07	Private	(1,591)	(1,591)
477	<del>Robert Fulwider</del>	31-May-07	Private	(5,818)	(5,818)
481	Jeffrey Bryant Gilkeson	31-May-07	Private	(13,750)	(13,750)
482	Alan & Jennifer Jeskey	31-May-07	Private	(12,500)	(12,500)
483	DTMS Investments Inc.	31-May-07	Private	(1,785)	(1,785)
484	Adam Hathcock 2006 Trust	31-May-07	Private	(12,500)	(12,500)
475	Endalkachew Mersha	11-Jun-07	Private	(1,591)	(1,591)
480	D & J Gilmartin 2003 trust	11-Jun-07	Private	(20,000)	(20,000)
472	Dr Gilberto & Barbara Suarez	19-Jun-07	Private	(9,545)	(9,545)
488	Dr Gilberto & Barbara Suarez	19-Jun-07	Private	(45,000)	(45,000)
490	Bertha Suarez	20-Jun-07	Private	(2,727)	(2,727)
491	Gilbert Saavedra	20-Jun-07	Private	(363)	(363)
501	Berkeley Partners, LLC	09-Jul-07	Private	(75,000)	(75,000)
503	David Kasubowski	10-Jul-07	Private	(4,625)	(4,625)
511	Tamako Nelson	27-Jul-07	Private	(25,000)	(25,000)
512	Berkeley Partners, LLC	27-Jul-07	Private	(50,000)	(50,000)
513	Rebecca Natrajan	02-Aug-07	Private	(14,286)	(14,286)
525	DTMS Investments Inc.	14-Aug-07	Private	(1,000)	(1,000)
526	DTMS Investments Inc.	14-Aug-07	Private	(1,166)	(1,166)
527	Nevada Land Advisors & Investments Inc.	14-Aug-07	Private	(2,500)	(2,500)
529	All of US LLC	14-Aug-07	Private	(8,000)	(8,000)
530	Sports & Ent Media	14-Aug-07	Private	(87,500)	(87,500)
531	Berkeley Partners, LLC	15-Aug-07	Private	(50,000)	(50,000)
532	ARMR, LLC	15-Aug-07	Private	(10,417)	(10,417)
533	RVS Ventures, Inc	15-Aug-07	Private	(400,000)	(400,000)
536	William B. Pike Jr.	10-Sep-07	Private	(1,000,000)	(1,000,000)

Total Shares Sold

(9,390,302)

(9,390,302)

Share Balance, Pre Settlement Agreement

5,054,698

# EXHIBIT B: MMA NEWS MEDIA REPORTS

## [WWW.MMAPAYOUT.COM](http://WWW.MMAPAYOUT.COM) AND [SHERDOG.COM](http://SHERDOG.COM) ARTICLES

October 9, 2007

Details on Zuffa's New Capital Structure

By: Adam Swift

[www.sherdog.com](http://www.sherdog.com)

After consulting a pair of accounting professionals, we now have a better understanding of the actual financial structure in place at Zuffa as detailed in two separate Standard & Poor's reports released this year. The company has secured two loans, totaling \$350 million, which should provide a sound financial footing through at least 2015. Zuffa "will have few external funding requirements in the intermediate term once the new capital structure is implemented."

Zuffa currently has a \$350 million senior secured credit facility at its disposal. That number represents a term loan for \$325 million due in 2015 and a \$25 million revolving credit facility (a so called "revolver") due in 2013. The company has full availability on its revolver indicating that to this point it has been able to fund operations out of its normal cash flow. As a result the revolver currently represents little more than a rainy day fund. Zuffa's total debt outstanding as of June 30, 2007 was \$325 million.

Proceeds of the term loan were used to pay a one-time special dividend to Zuffa's owners, the Fertitta brothers (90%) and Dana White (10%), and to refinance the company's existing debt. We can only speculate about the amount of debt the company refinanced and the amount it paid out in dividends, however, some comments in the S&P reports suggest that the dividend payments could be quite substantial. It is also interesting to note that the term loan was originally proposed at \$275 million, as of the May 22 report, only to be increased to \$325 million after June 30. This time frame coincides with the closing of Zuffa's purchase of Pride's assets. The significance of this increase and its connection to the purchase of Pride is purely speculative.

The loans are secured by bank issued securities as opposed to the company's assets. The company's assets are almost entirely composed of their brands, contracts, and cash, with very little in the way of tangible assets. S&P estimates the resale value of the company's assets, assuming a forced liquidation, at roughly \$150-240 million dollars. As a result of these numbers, free cash flow is paramount in the minds of the company's creditors. The company's credit rating outlook was cut because of weak free cash flow caused by decreased operating margins. Unless free cash flow improves, the owners will have to cut dividend payments to avoid a cut in their rating.

Special thanks to Jeremy Goodwin, CPA & Graham Stephens, CPA.

January 30, 2008

UPDATE: Bevanda Magica LLC

MMApayout.com has confirmed through filings with the Nevada Secretary of State's Office that Bevanda Magica is a registered LLC. According to the filings, the company was formed on May 17, 2007. The managers of the company are Lorenzo and Frank Fertitta.

Posted by Adam Swift at 3:00 PM

Labels: UFC, xyience, Zuffa

'Bevanda Magica': Xyience Bankruptcy Filings Reveal Deep Ties to Zuffa

Options: [Email Article](#) | [Printer Friendly](#)

'Bevanda Magica

January 30, 2008

by Adam Swift (aswift@sherdog.com)

Xyience has been a ubiquitous presence during the UFC breakout that began in 2005. Whether in the center of the Octagon, on fighter's trunks, in television commercials or on cans during post-fight interviews, the supplement maker was everywhere the UFC went.

In many ways, Xyience represented the financial promise of the MMA industry, with ties to some of the sport's top stars, including Chuck Liddell (Pictures) and Matt Hughes (Pictures), and shelf space in GNC and health food stores across the country. But even in a rapidly evolving industry, the company's fall from grace was sudden and dramatic.

In 2007, cracks begin to emerge with missed payments to sponsored fighters, constant turnover in corporate leadership, shareholder discontent and rumors of insolvency. The days of rumored seven-figure endorsement deals and prominent placement at UFC events were gone, replaced by digitally distorted logos on UFC replays and a move from the center of the mat to the Octagon post pad.

On Oct. 13, Xyience announced what appeared to be a fresh start. With Russell Pike, the company's notorious founder and convicted felon, out of the picture, Xyience simultaneously announced a three-year extension of its exclusive partnership with the UFC and a new \$12 million funding effort.

"We believe that the combination of new financing and the extension of our UFC relationship firmly positions the company for success as we embark on a worldwide expansion of the Xyience and Xenergy brands," said then CEO Adam Frank at the time.

UFC President Dana White added, "Xyience has been a long-time sponsor of the UFC, and we look forward to our future endeavors together as both of our companies continue their explosive growth."

Optimism was short lived, though, as the embattled company filed for Chapter 11 bankruptcy on Jan. 18.

Bankruptcy filings obtained by Sherdog.com suggest a much deeper relationship between Xyience and Zuffa, parent company of the UFC, than merely a lucrative sponsorship agreement.

In fact, documents reveal that Xyience's third largest shareholder is closely tied to Zuffa and the UFC.

According to a shareholder list filed in court, 5,166,667 shares (7.9 percent of shares outstanding, which constitutes 10.1 percent of voting shares) of Xyience stock are issued to "Bevanda Magica (UFC)." An Italian phrase that translates to "magic drink," Bevanda Magica LLC is listed at 2960 W. Sahara Avenue Suite 200 in Las Vegas. The company was formed on May 17, 2007 with Frank and Lorenzo Fertitta listed as its managers. Zuffa's corporate headquarters, along with several subsidiaries, is variously listed in filings with the Nevada secretary of state's office as 2960 West Sahara Avenue Suite 200 or Suite 100.

Requests for comment from Zuffa LLC went unanswered.

Also named on the shareholder list are Zuffa Chief Financial Officer John Mulkey, who holds 50,000 shares of Xyience, and resident agent John Hertig, who holds 25,000.

The significant financial investment that UFC co-owners Frank and Lorenzo Fertitta made into Xyience, first reported last October in The Wrestling Observer Newsletter, has also been confirmed by the bankruptcy filing. Xyience's single largest creditor is Zyen, a company controlled by Fertitta Enterprises that is listed at the same address as Bevanda Magica (UFC), according to filings with the Nevada secretary of state's office.

Zyen holds roughly \$12.5 million in total claims against Xyience, including approximately \$5.3 million in secured claims, which matches all of the company's physical assets. Last week Zyen was granted

permission by the judge presiding over the bankruptcy proceeding to make an additional \$1 million loan to Xyience.

Xyience's UFC sponsorship is reportedly worth \$15 million in the first year, according to the Review-Journal. Zyen's loans to the company total \$12.5 million. The filings reflect Zuffa Marketing LLC, a subsidiary of Zuffa, is still owed \$3 million.

Requests for comment from Xyience President Omer Sattar on the Fertittas' and Zuffa's involvement in Xyience, as well as the identity of Bevanda Magica went unanswered.

Chapter 11 bankruptcy provides a company with protection from its creditors while it attempts to reorganize. When the company's debts exceed its assets, as is the case for Xyience, the proceedings often result in the company's creditors assuming ownership of the reorganized company.

Xyience has \$42,342,831 in liabilities, including \$27,319,517 in secured claims, compared to just \$5,285,722 in assets, bankruptcy filings show. Accordingly, the Fertitta brothers could stand to become majority owners of the reorganized company.

Last week Sattar told the Las Vegas Review-Journal that Xyience would have liquidated under Chapter 7 bankruptcy without the continued support of the Fertittas. "We're excited about the opportunity [to reorganize the company]," Sattar told the newspaper. "Xyience has a great brand name and has a strong affiliation with the UFC."

Xyience is currently involved in eight civil lawsuits and is subject to a pending involuntary bankruptcy filing by Russell Pike and other disgruntled shareholders, according to the bankruptcy filings. The Las Vegas Review-Journal reported accusations of physical threats by Pike and his associates against the current management of the company.

A shareholder, who wished to remain anonymous, told Sherdog.com that Xyience's original owners (Pike and his associates) approached him and other investors to join a lawsuit against the Fertittas.

The shareholder has chosen to remain neutral in the dispute, but told Sherdog.com that "anyone who invested in Xyience by taking the necessary steps and due diligence should have understood from their PPM (private placement memorandum) that it was extremely high risk."

The filings also validate reports of Xyience's failure to honor endorsement agreements. According to the filings, Xyience owes Rich Franklin (Pictures) (\$21,000), Anderson Silva (\$11,666.66), Matt Serra (Pictures) (\$36,000), Travis Lutter (Pictures) (\$36,000) and Heath Herring (Pictures) (\$8,000).

In November, Sherdog.com confirmed reports that Chuck Liddell (Pictures), Forrest Griffin (Pictures), Matt Hughes (Pictures) and Franklin had struggled collecting from the company. All four fighters were prominently featured in Xyience's multimillion-dollar marketing campaign, including a series of television commercials.

Adam Swift is the Editor of Payout: The Business of MMA and a contributor to Sherdog.com

Update: Report Connects Zuffa to Xyience  
Options: Email Article | Printer Friendly  
Update: Report Connects Zuffa to Xyience  
November 5, 2007  
by Adam Swift (adam\_m\_swift@yahoo.com)

Xyience recently signed a three-year extension on its exclusive partnership with the UFC, but the supplement company's reportedly close ties to the mixed martial arts promotion have not appeased several disgruntled fighters Xyience once sponsored.

Xyience, which formed in 2004, announced the extension in conjunction with a \$12 million funding effort.

A relationship between Xyience and Zuffa that runs much deeper than advertising and sponsorship agreements has long been speculated though not acknowledged. However, this week in the Wrestling Observer Newsletter, Dave Meltzer released a non-sourced report that said UFC owners Lorenzo and Frank Fertitta were responsible for Xyience's recent multi-million dollar funding.

When asked for comment on the source of funding and specifically about the Fertittas' and Dana White's involvement in Xyience, the Las Vegas-based sports nutrition company, through a public relations representative, told Sherdog.com that the money was provided "by a private group of local strategic investors. Company policy is to not comment on the specific individuals that participated in a round of funding."

Requests for comment from the UFC went unanswered.

The Fertittas' reported involvement in Xyience could raise eyebrows in light of reports that several high-profile UFC fighters recently severed ties with the company, saying it failed to honor the financial terms of endorsement deals, and news of possible supplement contamination.

In the Oct. 24 Wrestling Observer Newsletter, Meltzer reported that former UFC light heavyweight champion Chuck Liddell (Pictures) is no longer associated with Xyience due to nonpayment on his substantial endorsement deal. Meltzer also reported that Forrest Griffin (Pictures) and Rich Franklin (Pictures) have left the company.

Liddell and Griffin -- along with Josh Koscheck (Pictures), Mike Swick (Pictures) and Cung Le (Pictures) - have been paid in full as of a couple weeks ago, according to their manager DeWayne Zinkin Jr.

"Early on there were issues," Zinkin told Sherdog.com Monday morning. "But since we've dealt with [Xyience CEO] Adam Frank and the new people in charge now, everything that they have said they were going to do, they've done. All of our guys have been paid in full, so we're happy. We're waiting to get proposals from them for future work."

The same could not be said for Franklin.

"At the beginning of the year Xyience quit returning phone calls and e-mails," Franklin's manager, M-1 president and CEO Monte Cox, said late Sunday. "They are now seven or eight months behind on payment for Rich."

Despite the wishes of several fighters, including UFC champions Matt Hughes (Pictures) and Sean Sherk (Pictures), the Xyience Web site continues to feature fighters who have split with the company.

"Matt is no longer with Xyience and is now with Nutritox," Hughes' business manager, Brian Patton, told Sherdog.com. "His contract expired on Aug. 15. He has since signed a long-term deal with Nutritox. He was not happy with [Xyience's] performance."

Of his relationship with Xyience, Sherk told fiveouncesofpain.com in late October that he's no longer affiliated with them after "they stiffed me a bunch of money."

"They stiff everybody," said the lightweight, who is currently appealing California State Athletic Commission allegations that he tested positive for the anabolic agent nandrolone metabolite following a fight in Sacramento versus Hermes Franca (Pictures). "A lot of people are leaving them."

In response to the reports of fighters fleeing its ranks, a company representative said Xyience "has made good on its obligations regarding fighter sponsorships. Sponsoring fighters continues to be an important part of our strategy, and we value the relations with the fighters."

Of greater concern for Xyience could be the contents of a pre-trial brief and exhibits filed by Sherk's attorney Howard Jacobs with the CSAC and obtained by Sherdog.com.

Among a litany of reports, it is asserted that "Xyience Xtreme Joint Formula" -- one of several Xyience-branded supplements Sherk said he took before his July 7 title defense at the Arco Arena -- tested positive for the anabolic agent 1-androstendione.

Said Susan Wierzbicki, Xyience's Director of Quality Assurance: "The company employs stringent quality control procedures and contracts with manufacturers that are GMP (Good Manufacturing Practices) compliant."

Jacobs told Sherdog.com it was not his intention to finger Xyience as the culprit of Sherk's positive test in California.

Wierzbicki said Xyience halted all shipments of the product until it can conduct independent testing by a certified lab.

Seemingly unrelated to the contamination and fight sponsorship issues, Xyience is currently subject to a Desist and Refrain Order issued by the California Department of Corporations on Sept. 10, 2007, for the fraudulent business practices of Xyience founder and former CEO Russell Craig Pike.

The Desist and Refrain Order obtained by Sherdog.com contains a laundry list of allegations against the company and Pike: selling \$2.1 million of stock to California residents without the state's authorization; making material misrepresentations to investors regarding pending litigation and the prior business success of Pike; failure to disclose a default judgment against Pike for writing bad checks; failure to disclose signed confessions of judgment in an action involving Pike's former business venture, Advanced Cart Technology (ACT), for using false pretenses, false representations, and fraud to convince investors to invest in the company; failure to disclose a prior guilty plea to bank fraud, money laundering, and aiding and abetting in connection with ACT, resulting in a sentence of 59 months in a federal prison, three years of supervised release and a restitution order for \$2,367,146; failure to disclose ACT bankruptcy proceedings; failure to disclose a prior prison sentence for grand theft and forgery.

According to Robert Walsh, public information officer for the Nevada secretary of state, Pike was listed as president of Xyience from July 20, 2005, until an amended list was filed on Oct. 13, 2006.

A Xyience spokesperson said Pike is currently a minority shareholder in the company, and any stock he owns is non-voting.

"He has no role in management or operations," the spokesperson said, "and is not an employee of the company."

In the year that Pike has taken a step back, Xyience increased distribution from 4,600 to 45,000 stores, including national chains such as 7-11 and GNC, according to a company news release.

Said UFC president Dana White on the relationship between his company and Xyience: "We look forward to our future endeavors together as both of our companies continue their explosive growth."

Adam Swift is the editor of [www.MMAPayout.com](http://www.MMAPayout.com)

January 22, 2008

UPDATED: UFC Sponsor Update: Harley-Davidson Official; Budweiser Coming Soon?; Xyience Files for Bankruptcy

Over the weekend Harley-Davidson officially announced its exclusive motorcycle sponsorship of the UFC and WEC. Key quotes:

“This is the first major worldwide sports sponsorship for Harley-Davidson outside the motorcycle/automotive category,” said Harley-Davidson Senior Vice President and Chief Marketing Officer Mark-Hans Richer. “We see our brand embodied in these fighters: young, aggressive, hard working individuals who cut against the grain.”

“Like Harley-Davidson, UFC is a true American passion that transcends cultures and languages, and shares incredible and growing popularity in the United States, Europe and around the world. Harley-Davidson is a powerhouse brand, we are proud to call it our exclusive UFC and WEC motorcycle sponsor and to have the historic Harley-Davidson Bar & Shield in the Octagon,” said UFC President Dana White.

While Harley-Davidson will occupy the center of the canvas, sources continue to tell MMApayout.com that a deal between the UFC and Budweiser is believed to be eminent with the King of Beers set to take its place on the canvas as soon as April.

Additionally, this morning the Las Vegas Review-Journal reported that Xyience has filed for Chapter 11 bankruptcy. MMApayout.com will have further details on this story in the coming days.

Posted by Adam Swift at 3:22 PM

Labels: sponsorships, UFC, WEC, xyience

December 17, 2007

Details on Xyience's UFC Sponsorship

Dave Meltzer reported in the most recent Wrestling Observer Newsletter that the new three-year Xyience sponsorship agreement with the UFC is worth a total of \$32.14 million, assuming the company lasts through the term of the contract. In 2006, the company's total losses before taxes were \$55,837,653.65 million on \$22,475,964.88 in total sales. The loss is accounted for by the \$42.2 million spent on marketing the product as product costs were only roughly \$14 million.

Posted by Adam Swift at 5:00 PM

Labels: sponsorships, UFC, xyience

November 5, 2007

Report Connects Zuffa to Xyience

I have a new story posted at Sherdog.com, Report Connects Zuffa to Xyience.

The story covers the Fertitta's reported financial involvement with Xyience, Xyience's failure to honor sponsorship agreements with UFC fighters, allegations of contaminated supplements, the desist and refrain order in California, and Russell Pike's involvement in the company. Quotes from Xyience, Monte Cox, and Matt Hughes business manager are included.

UPDATE: Quotes from Liddell and Griffin's manager are now included:

Liddell and Griffin -- along with Josh Koscheck, Mike Swick, and Cung Le -- have been paid in full as of a couple weeks ago, according to their manager DeWayne Zinkin Jr.

"Early on there were issues," Zinkin told Sherdog.com Monday morning. "But since we've dealt with [Xyience CEO] Adam Frank and the new people in charge now, everything that they have said they were going to do, they've done. All of our guys have been paid in full, so we're happy. We're waiting to get proposals from them for future work."

October 16, 2007

#### Xyience Subject to Desist and Refrain Order in California

Xyience, who recently signed a 3-year contract extension as the official energy drink of the UFC, was issued a Desist and Refrain order by California's Department of Corporations on September 10, 2007. Among the allegations contained in the order:

- \* Selling \$2.1 million dollars in stock to California residents without the state's authorization.
- \* Material misrepresentations made to investors regarding pending litigation and the prior business success of CEO Russell Pike.
- \* Failure to disclose a default judgement against Pike for writing bad checks.
- \* Failure to disclose signed confessions of judgement in an action involving Pike's former business venture, Advanced Cart Technology (ACT), for using false pretenses, false representations, and fraud to convince investors to invest in the company.
- \* Failure to disclose a prior guilty plea to bank fraud, money laundering, and aiding and abetting in connection with ACT, resulting in a sentence of 59 months in a federal prison, three years of supervised release, and a restitution order for \$2,367,146.
- \* Failure to disclose ACT bankruptcy proceedings
- \* Failure to disclose a prior prison sentence for grand theft and forgery

The order concludes:

Based upon the foregoing findings, the California Corporations Commissioner is of the opinion that the common stock of Xyience Incorporated is a security subject to qualification under the California Corporate Securities Law of 1968 (California Corporations Code section 25000 et seq.) and is being or has been offered or sold without being qualified in violation of Corporations Code section 25110. Pursuant to section 25532 of the Corporate Securities Law of 1968, Russell Craig Pike and Xyience Incorporated are hereby ordered to desist and refrain from the further offer or sale in the State of California of securities, including but not limited to common stock, unless and until qualification has been made under the law or unless exempt.

In addition, the California Corporations Commissioner is of the opinion that the securities of Xyience Incorporated were offered or sold in this state by means of written or oral communications which included an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, in violation of section 25401 of the Corporate Securities Law of 1968. Pursuant to section 25532 of the Corporate Securities Law of 1~68, Russell Craig Pike and Xyience Incorporated are hereby ordered to desist and refrain from offering or selling or buying or offering to buy any security in the State of California, including but not limited to common stock, by means of any written or oral communication which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

The order was filed approximately one month prior to announcement of the extension of the company's relationship with the UFC.

October 11, 2007

#### Xyience Announces 3-year Extension of UFC Sponsorship

Yesterday Xyience announced a \$12 million dollar funding effort as well as a three year extension of its exclusive sponsorship with the UFC. Xenergy is the official energy drink of the UFC. Quotes from the key players:

"XYIENCE has been a long time sponsor of the UFC(R) and we look forward to our future endeavors together as both of our companies continue their explosive growth," said Dana White, UFC(R) President.

"We believe that the combination of new financing and the extension of our UFC(R) relationship firmly positions the company for success as we embark on a worldwide expansion of the XYIENCE and Xenergy brands," said Adam Frank, XYIENCE CEO.

Terms of the sponsorship were not disclosed.

UFC Owners Defendants in Xyience Lawsuit  
Options: Email Article | Printer Friendly  
UFC Owners Defendants in Xyience Lawsuit  
March 21, 2008  
by Adam Swift (adam\_m\_swift@yahoo.com)

Xyience's bankruptcy proceeding is set to come to a close April 1 with a public auction, but the dispute between dissident shareholders and the company's directors appears to be far from over.

Last December shareholders, led by Ronald Soloman, who controls 35 percent of Xyience's outstanding shares by proxy, filed suit against Xyience and its directors for breach of fiduciary duty to the company's shareholders.

On March 13 the plaintiff shareholders amended their complaint to include Fertitta Enterprises and Zyen, private companies owned by UFC co-owners Frank and Lorenzo Fertitta, as defendants. The complaint alleges that Zyen and Fertitta Enterprises aided and abetted Xyience's corporate directors in breaching their fiduciary duty to shareholders as well as engaged in a conspiracy to defraud shareholders.

The source of the allegations is the Fertittas' \$12 million loan to the company last fall. According to the complaint, the loan was repayable in one year with a 15-percent interest rate and collateralized by all of Xyience's assets. The terms also allegedly included warrants for 10 percent of capitalization of the company at one cent per share and 50 percent of the company's equity if Xyience failed to repay.

Thus in the event of default, the Fertittas could purchase 60 percent of Xyience's stock for a nominal purchase price. Additionally, the default provision would also be triggered if the shareholders voted to remove any members of the board.

The complaint alleges that this loan "was neither in the best interests of the shareholders or the company. Indeed, the Fertitta funding did not fund Xyience. Rather, it provided Xyience funds that were immediately used to fund a debt owed to the Ultimate Fighting Championship, which is owned by the Fertittas."

It is also believed that Xyience directors Adam Frank and Kirk Sanford each received 4.2 million stock options under the deal that vested if there were a change in control of the company.

According the complaint, the Fertittas and Xyience's directors represented that the loan would be used "to meet [the company's] capital needs and fuel its growth."

As a result the Fertittas are accused of aiding and abetting breach of fiduciary duty because of their alleged knowledge that the loan was not for its stated purpose, not in the best interest of shareholders and would result in a breach of the fiduciary duty between the directors and shareholders.

During this period Xyience also executed a new sponsorship agreement with the UFC that the complaint alleges is "completely overpriced and less valuable [than] the prior agreement between Xyience and the UFC."

The complaint says that the UFC is to receive \$32.4 million over the three-year term of the new agreement: \$9 million in the first year, \$11 million in the second and \$12.4 million in the third.

Under the prior agreement, Xyience was the title sponsor with its marquee on the center of the mat at UFC events. The new agreement provided that after March 2008, Xyience would not be the title sponsor or

appear on the center of the mat, would not be announced by the ring announcer, would not be announced as the title sponsor at commercial breaks and would no longer appear on fighters' clothing.

Adam Swift is the Editor of MMApayout.com and a regular contributor to Sherdog.com.

**FROM: <http://www.cyclenews.com/ShowStory.asp?HeadlineID=11780>**

## HARLEY-DAVIDSON SPONSORS ULTIMATE FIGHTING CHAMPIONSHIP®

Harley-Davidson is Presenting Sponsor of UFC® and WEC™ Events

MILWAUKEE (January 19, 2008) - Harley-Davidson Motor Company has teamed up with the Ultimate Fighting Championship® (UFC®) and World Extreme Cagefighting® (WEC™) organizations as a presenting sponsor and exclusive motorcycle sponsor.

“This is the first major worldwide sports sponsorship for Harley-Davidson outside the motorcycle/automotive category,” said Harley-Davidson Senior Vice President and Chief Marketing Officer Mark-Hans Richer. “We see our brand embodied in these fighters: young, aggressive, hard working individuals who cut against the grain.”

“Like Harley-Davidson, UFC is a true American passion that transcends cultures and languages, and shares incredible and growing popularity in the United States, Europe and around the world. Harley-Davidson is a powerhouse brand, we are proud to call it our exclusive UFC and WEC motorcycle sponsor and to have the historic Harley-Davidson Bar & Shield in the Octagon,” said UFC President Dana White.

Harley-Davidson’s sponsorship began with the UFC 79: NEMESIS event December 29, 2007 at the Mandalay Bay Events Center in Las Vegas, as witnessed by a sell-out audience of more than 11,000 and millions more on television around the world.

Harley-Davidson sponsorship of the UFC and WEC events includes its historic Bar & Shield logo placement in the center spot on the Octagon™ canvas, as a press conference and weigh-in backdrop and in other event locations. In addition, Harley-Davidson motorcycles and advertisements will appear at other UFC and WEC events and locations. The Company is also encouraging its independent dealers to hold UFC “fight night” events and customer parties in conjunction with a limited number of appropriate UFC events.

The first such dealer events begin with UFC 80: RAPID FIRE, held today in Newcastle, England, which will be broadcast live at noon Pacific Time (3 p.m. ET) as “The Prodigy” BJ Penn faces Joe “Daddy” Stevenson for the UFC World Lightweight Championship.

The Ultimate Fighting Championship® is the world’s leading professional mixed martial arts organization and offers the premier series of MMA sports events. Owned and operated by Zuffa, LLC, and headquartered in Las Vegas, Nev., UFC® produces over twelve live pay-per-view events annually that are distributed residually through North American cable and satellite providers including iN DEMAND Networks, DIRECTV, DISH Network, TVN Entertainment, Shaw Pay-Per-View, Bell ExpressVU, and Viewers Choice, and commercially through Joe Hand Promotions. In addition to its North American distribution, UFC programming is distributed in over 100 countries and territories throughout the world. For more information, or current UFC fight news, visit [www.ufc.com](http://www.ufc.com) or [uk.ufc.com](http://uk.ufc.com) or [www.ufcespanol.com](http://www.ufcespanol.com).

The WEC brand is recognized as one of the premier mixed martial arts organizations in the United States. Founded in 2001, the WEC features many of the most prominent athletes in the sport of mixed martial arts today. Owned and operated by WEC Holdings LLC., and headquartered in Las Vegas, Nev., the WEC produces live and taped events annually that are distributed through the Versus network. In addition to its

U.S distribution, WEC programming is shown on the TSN network in Canada. For more information and current WEC fight news, visit [www.wec.tv](http://www.wec.tv).

Harley-Davidson Motor Company, the only major U.S.-based motorcycle manufacturer, produces heavyweight motorcycles and a complete line of motorcycle parts, accessories and general merchandise. For more information, visit Harley-Davidson's Web site at [www.harley-davidson.com](http://www.harley-davidson.com).

## **BEVNET ARTICLE:**

Xyience Fires Sales Staff

Posted: 11/30/2007 3:21:38 PM |

42 Comments |

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Company may face bankruptcy.

It grew fast, hefted onto the shoulders of ultimate fighters. But the energy drink company Xyience might be crumbling faster than some of the opponents of Chuck Liddell.

Xyience, the Las Vegas-based maker of Xenergy, had seen fast expansion as a result of a sponsorship deal with the mixed martial arts league UFC and its popular television show "The Ultimate Fighter." But this week the company notified much of its approximately 70-member sales force that it would be firing them due to financial setbacks, and this has led to speculation it would soon file for bankruptcy.

The firings come after Xyience had experienced a remarkable run of success, drawing another \$12 million in investment as recently as one month ago. The brand is viable, sources say, as it has high name recognition in the crowd of young men who support the fast-growing UFC.

"It's a great brand, and the folks out at retail really identify with it," said Earl Kight, head of sales at San Diego-based Mesa Distributing. "We were very careful and patient with it and we'll continue to be patient with it now."

That support may not carry over to investors, who earlier this year ousted the company's founder, Russell Pike. Pike, facing rumors of lawsuits and bad publicity reported on largely by the sport's rabid Internet following, was forced out in January. After installing a temporary CEO and president, one of the company's primary investors, Adam Frank, recently became CEO.

Meanwhile, the company's sales kept rising – although those sales may not have kept up with a marketing outlay that involved television commercials, models, and the ongoing sponsorship of a sporting confederation whose surging popularity must be making it increasingly more expensive.

"They were spending so much on marketing that we didn't even have Point-of-Sale" materials, said one laid-off salesman. "The tie in with UFC is incredible, but there are a lot of issues."

That tie-in may be in jeopardy itself, however, as several of the UFC's top fighters have begun to distance themselves from Xyience products. Despite the lack of individual sponsorship, however, it remains, with Toyo Tires and Mickey's Malt Liquor, one of the league's three main sponsors.

Source: BevNET.com Staff

## **LAS VEGAS REVIEW JOURNAL ARTICLES:**

Jan. 25, 2008

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Troubled drink maker granted \$1 million loan

By JOHN G. EDWARDS  
REVIEW-JOURNAL

Bankruptcy Judge Mike Nakagawa is expected to sign an order within a few days approving post-bankruptcy financing for Xyience Inc., a Las Vegas-based energy-drink maker.

Nakagawa held a hearing Wednesday and agreed to allow Zyen, a company controlled by the Fertitta family, to make a \$1 million emergency loan. Zyen can increase the loan to \$2.6 million in the hopes Xyience can be sold within 75 days.

Greg Garman, an attorney for Zyen, said he will prepare an order for the judge to consider signing. Zyen already has \$12.5 million in unsecured claims against Xyience and a \$5.3 million secured claim against the company.

The energy drink company's product, Xenergy, is a key sponsor for the Ultimate Fighting Championship, a mixed martial arts company owned by brothers Frank and Lorenzo Fertitta.

The energy drink company is sold in 24,000 grocery and convenience stores around the country, president Omer Sattar said in an e-mail. However, Xyience has had difficulty in expanding the stores that carry its products while spending large amounts of money on advertising, Sattar said.

The company signed a \$15 million sponsorship contract with UFC for 2007. Other creditors include MTV Networks, the Travel Channel, MDK Motor Sports and Professional Bull Riders.

Adam Frank of Las Vegas, who owns 4.45 million shares of Xyience stock, joined the company in June as interim general manager. At the same time, Kirk Sanford was named special adviser to management. Sanford last year resigned as CEO at Global Cash Access, a Las Vegas company that operates automated teller machines in casinos.

"Employee morale is not good, and Xyience critics have emerged among the UFC community," Sattar said in a Jan. 18 statement filed with bankruptcy court. Several dissident shareholders complained during the bankruptcy court hearing Wednesday.

Xyience also has been involved in disputes with founder and former CEO Russell Pike, whom Sattar accused of using strong-arm tactics to get payments.

Pike was among those filing an involuntary bankruptcy case against Xyience early this month before the company filed a voluntary Chapter 11 petition for bankruptcy.

Under Chapter 11, companies are allowed to reorganize so that they can settle claims from creditors and continue in business.

Contact reporter John G. Edwards at [jedwards@reviewjournal.com](mailto:jedwards@reviewjournal.com) or (702) 383-0420.

[WWW.BLOODYELBOW.COM](http://WWW.BLOODYELBOW.COM)

The Fertittas Deal From the Bottom of the Deck

By Kid Nate

Posted on Fri Mar 21, 2008 at 08:43:24 PM EDT

Adam Swift has a piece up at Sherdog that outlines the suit against a couple of companies owned by UFC co-owners Frank and Lorenzo Fertitta who also own the UFC. They basically loaned Xyience money that Xyience spent "sponsoring" the UFC (why you ask? they needed sponsors to secure a \$325 million loan ). The kicker is that the loan included clauses that basically handed the whole company over to the Fertittas if the already floundering Xyience failed to repay. But here's the kicker, check how the new agreement works, it's a classic "heads I win, tails you lose" proposition:

The complaint says that the UFC is to receive \$32.4 million over the three-year term of the new agreement: \$9 million in the first year, \$11 million in the second and \$12.4 million in the third.

Under the prior agreement, Xyience was the title sponsor with its marquee on the center of the mat at UFC events. The new agreement provided that after March 2008, Xyience would not be the title sponsor or appear on the center of the mat, would not be announced by the ring announcer, would not be announced as the title sponsor at commercial breaks and would no longer appear on fighters' clothing.

# EXHIBIT D

Costs from buyout led to loss for quarter, year for Station Casinos

Station Casinos lost money for the quarter and the year because of costs from a management-led buyout of the company, federal filings show.

The dominant player in the locals-oriented gaming market posted a \$417.4 million loss for the fourth quarter ended Dec. 31, reversing earnings of \$23.1 million in the same quarter in 2006, the company's federal filings show.

For all of 2007, Station Casinos reported a net loss of \$375.6 million, reversing net income of \$110.2 million in 2006. In a filing with the Securities and Exchange Commission, Station Casinos said the losses were driven by a 167 percent increase in operating costs and expenses in the fourth quarter, including \$299.2 million in corporate expenses, up from \$15.7 million in 2006.

The expenses were tied largely to the immediate vesting of executive ownership shares in the new, privately owned company. Station Casinos went private Nov. 7 through a \$5.4 billion buyout led by members of the Fertitta family, which founded the company.

Additional costs of \$143.3 million related to the buyout also hit during the quarter, according to a company statement.

Even without the one-time expenses, an economic slowdown is reflected in the company's quarterly net revenues of \$357.5 million, a decrease of \$1.2 million from a year ago.

Station Casinos' cash flow, defined as earnings before interest, taxes, depreciation and amortization, dropped 6.9 percent to \$131.7 million from \$141.5 million a year earlier.

For the year, net revenues increased 8 percent, to approximately \$1.4 billion from approximately \$1.3 billion in 2006. Cash flow also increased 3.3 percent, to \$552.5 million from \$534.9 million in 2006.

-- Arnold M. Knightly

Review-Journal

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#### Station Casinos Announces Fourth Quarter Results

LAS VEGAS--(BUSINESS WIRE)--Station Casinos, Inc. ("Station" or the "Company") today announced the results of its operations for the fourth quarter ended December 31, 2007.

#### Results of Operations

The Company's net revenues for the fourth quarter ended December 31, 2007 were approximately \$357.5 million, which were relatively unchanged compared to the prior year's fourth quarter. The Company reported EBITDA for the quarter of \$131.7 million, a decrease of 7% compared to the prior year's fourth quarter.

During the fourth quarter, the Company incurred \$1.9 million in costs to develop new gaming opportunities, primarily related to Native American gaming, \$143.3 million related to costs associated with the Merger (as defined below), \$287.7 million of expense related to equity-based awards, a \$20.3 million

loss on early retirement of debt, a \$16.6 million impairment loss, preopening expenses and other non-recurring costs. Excluding these items, the Company reported a net loss of \$4.5 million.

The Company's earnings from its Green Valley Ranch joint venture for the fourth quarter were \$12.8 million, which represents a combination of the Company's management fee plus 50% of Green Valley Ranch's operating income. For the fourth quarter, Green Valley Ranch generated EBITDA before management fees of \$28.8 million, a decrease of 4% compared to the same period in the prior year.

#### Las Vegas Market Results

For the fourth quarter, net revenues from the Major Las Vegas Operations, excluding Green Valley Ranch, were \$326.3 million, a 2% increase compared to the prior year's fourth quarter, while EBITDA from those operations decreased 7% to \$109.6 million.

EBITDA is not a generally accepted accounting principle ("GAAP") measurement and is presented solely as a supplemental disclosure because the Company believes that it is a widely used measure of operating performance in the gaming industry and as a principal basis for valuation of gaming companies. EBITDA is further defined in footnote 1.

#### Capital Expenditures

Total capital expenditures were \$173.7 million for the fourth quarter. Expansion and project capital expenditures included \$3.6 million for the expansion of Fiesta Henderson, \$6.0 million for the expansion of Red Rock including the parking garage and \$139.7 million for the purchase of land.

#### Merger

On November 7, 2007, the Company completed its merger (the "Merger") with FCP Acquisition Sub, a Nevada corporation ("Merger Sub"), pursuant to which Merger Sub merged with and into the Company with the Company continuing as the surviving corporation. The Merger was completed pursuant to the Agreement and Plan of Merger, dated as of February 23, 2007 and amended as of May 4, 2007, among the Company, Fertitta Colony Partners LLC, a Nevada limited liability company ("FCP"), and Merger Sub.

As a result of the Merger, approximately 24.1% of the issued and outstanding shares of non-voting common stock of the Company are owned by Fertitta Partners LLC, a Nevada limited liability company ("Fertitta Partners"), which is owned by affiliates of Frank J. Fertitta III, Chairman and Chief Executive Officer of Station, affiliates of Lorenzo J. Fertitta, Vice Chairman and President of Station, affiliates of Blake L. Sartini and Delise F. Sartini, and certain officers and other members of management of the Company. The remaining 75.9% of the issued and outstanding shares of non-voting common stock of the Company are owned by FCP Holding, Inc., a Nevada corporation ("FCP HoldCo") and a wholly-owned subsidiary of FCP. FCP is owned by an affiliate of Colony Capital, LLC ("Colony") and affiliates of Frank J. Fertitta III and Lorenzo J. Fertitta. Substantially simultaneously with the consummation of the Merger, all of the shares of voting common stock of Station were issued for nominal consideration to FCP VoteCo LLC, a Nevada limited liability company ("FCP VoteCo"), which is owned by Frank J. Fertitta III, Lorenzo J. Fertitta and Thomas J. Barrack, Jr., Chairman and Chief Executive Officer of Colony.

At the effective time of the Merger, each outstanding share of the Company's common stock, including any rights associated therewith (other than shares of the Company's common stock owned by FCP, Merger Sub, FCP HoldCo, Fertitta Partners or any wholly-owned subsidiary of the Company or shares of common stock held in treasury by the Company) was cancelled and converted into the right to receive \$90 in cash, without interest. Following the consummation of the Merger, the Company became privately owned through FCP HoldCo, Fertitta Partners and FCP VoteCo. The Company's common stock ceased trading on the New York Stock Exchange at market close on November 7, 2007, and is no longer listed on any exchange or quotation system.

#### Company Information and Forward Looking Statements

Station Casinos, Inc. is the leading provider of gaming and entertainment to the residents of Las Vegas, Nevada. Station's properties are regional entertainment destinations and include various amenities, including numerous restaurants, entertainment venues, movie theaters, bowling and convention/banquet space, as well as traditional casino gaming offerings such as video poker, slot machines, table games, bingo and race and sports wagering. Station owns and operates Red Rock Casino Resort Spa, Palace Station Hotel & Casino, Boulder Station Hotel & Casino, Santa Fe Station Hotel & Casino, Wildfire Casino and Wild West Gambling Hall & Hotel in Las Vegas, Nevada, Texas Station Gambling Hall & Hotel and Fiesta Rancho Casino Hotel in North Las Vegas, Nevada, and Sunset Station Hotel & Casino, Fiesta Henderson Casino Hotel, Magic Star Casino, Gold Rush Casino and Lake Mead Casino in Henderson, Nevada. Station also owns a 50% interest in Green Valley Ranch Station Casino, Barley's Casino & Brewing Company, The Greens and Renata's Casino in Henderson, Nevada and a 6.7% interest in the joint venture that owns the Palms Casino Resort in Las Vegas, Nevada. In addition, Station manages Thunder Valley Casino near Sacramento, California on behalf of the United Auburn Indian Community.

This press release contains certain forward-looking statements with respect to the Company and its subsidiaries which involve risks and uncertainties that cannot be predicted or quantified, and consequently, actual results may differ materially from those expressed or implied herein. Such risks and uncertainties include, but are not limited to, the ability to recognize the benefits of the Merger; the impact of the substantial indebtedness incurred to finance the consummation of the Merger; the ability to maintain existing management; integration of acquisitions; the effects of local and national economic, credit and capital market conditions on the economy in general, and on the gaming and hotel industries in particular; changes in laws, including increased tax rates, regulations or accounting standards, third-party relations and approvals, and decisions of courts, regulators and governmental bodies; litigation outcomes and judicial actions, including gaming legislative action, referenda and taxation; acts of war or terrorist incidents or natural disasters; the effects of competition, including locations of competitors and operating and market competition; and other risks described in the filings of the Company with the Securities and Exchange Commission, including, but not limited to, the Company's Annual Report on Form 10-K for the year ended December 31, 2007, and its Registration Statement on Form S-3ASR File No. 333-134936. All forward-looking statements are based on the Company's current expectations and projections about future events. All forward-looking statements speak only as of the date hereof and the Company undertakes no obligation to publicly update any forward-looking statements, whether as a result of new information, future events or otherwise.

Construction projects such as the development of Aliante Station entail significant risks, including shortages of materials or skilled labor, unforeseen regulatory problems, work stoppages, weather interference, floods and unanticipated cost increases. The anticipated costs and construction periods are based on budgets, conceptual design documents and construction schedule estimates. There can be no assurance that the budgeted costs or construction period will be met.

Development of the proposed gaming and entertainment projects with the Gun Lake Tribe, the Federated Indians of Graton Rancheria, the Mechoopda Indian Tribe of Chico Rancheria and the North Fork Rancheria of Mono Indians and the operation of Class III gaming at each of the projects is subject to certain governmental and regulatory approvals, including, but not limited to, approval of state gaming compacts with the State of Michigan or the State of California, the Department of the Interior completing the process of taking land into trust for the benefit of the tribes and approval of the management agreements by the National Indian Gaming Commission. No assurances can be given as to when, or if, these governmental and regulatory approvals will be received.

(1) EBITDA consists of net (loss) income plus income tax benefit (provision), interest and other expense, net, loss on early retirement of debt, loss or gain on asset disposals, net, preopening expenses, management agreement/lease termination costs, merger transaction costs, impairment loss, other non-recurring and non-cash costs, depreciation, amortization and development expense. EBITDA is presented solely as a supplemental disclosure because the Company believes that it is a widely used measure of operating performance in the gaming industry and as a principal basis for valuation of gaming companies. The Company believes that in addition to cash flows and net (loss) income, EBITDA is a useful financial

performance measurement for assessing the operating performance of the Company. Together with net (loss) income and cash flows, EBITDA provides investors with an additional basis to evaluate the ability of the Company to incur and service debt and incur capital expenditures. To evaluate EBITDA and the trends it depicts, the components should be considered. The impact of income tax benefit (provision), interest and other expense, net, loss on early retirement of debt, loss or gain on asset disposals, net, preopening expenses, management agreement/lease termination costs, merger transaction costs, impairment loss, other non-recurring and non-cash costs, depreciation, amortization and development expense, each of which can significantly affect the Company's results of operations and liquidity and should be considered in evaluating the Company's operating performance, cannot be determined from EBITDA. Further, EBITDA does not represent net (loss) income or cash flows from operating, financing and investing activities as defined by generally accepted accounting principles ("GAAP") and does not necessarily indicate cash flows will be sufficient to fund cash needs. It should not be considered as an alternative to net (loss) income, as an indicator of the Company's operating performance or to cash flows as a measure of liquidity. In addition, it should be noted that not all gaming companies that report EBITDA or adjustments to such measures may calculate EBITDA or such adjustments in the same manner as the Company, and therefore, the Company's measure of EBITDA may not be comparable to similarly titled measures used by other gaming companies. A reconciliation of EBITDA to net (loss) income is included in the financial schedules accompanying this release.

[http://www.lvbusinesspress.com/articles/2008/02/19/news/iq\\_19685349.txt](http://www.lvbusinesspress.com/articles/2008/02/19/news/iq_19685349.txt)

Three ex-Station employees claim payroll abuses while casino company denies allegations  
Class action sought by Reno firm in fuzzy area of Nevada labor law

BY: VALERIE MILLER

Station Casinos, a company known for its high employee-satisfaction ratings, is facing a potential class action lawsuit over allegedly not paying its workers overtime and compensating them for all hours worked. The case may also spur similar litigation against other casino companies, observers said.

McInerney & Jones, a Reno law firm specializing in class action cases, filed the lawsuit in federal court Feb. 4 on behalf of three former Station employees: Josh Lukevich, Cathy Scott and Julie St. Cyr.

The law firm seeks to have the case certified as a class action. If it were so classified, the firm could represent the approximately 10,000 hourly employees at the locals' gaming giant.

#### BUSINESS PRESS FILE PHOTO

A former hourly room runner at Fiesta Henderson is one of three named plaintiffs in a lawsuit accusing Station Casinos of failing to pay its employees for all hours worked, failing to pay overtime and failing to pay wages in a timely manner.

#### BUSINESS PRESS FILE PHOTO

Two of three plaintiffs named in a worker pay lawsuit filed against Station Casinos spent time working at Boulder Station.

If certified as a class action, the lawsuit would seek claims exceeding \$5 million, said Charles Jones, the lawyer for the named plaintiffs. His firm filed a complaint against Station claiming that it failed to pay its employees for all hours worked, failed to pay overtime and failed to pay wages in a timely manner. An additional charge of conversion was also levied. Conversion is when a person's property is converted for use by another.

Station denied the claims.

"Station Casinos ... has recently learned that three former team members have filed a lawsuit alleging that they were not paid for certain hours worked during a portion of their tenure at the company," the e-mail statement from Station reads in part. "The company is justifiably proud of its reputation as one of the best

employers in the gaming industry, and is, therefore, disappointed that these former team members would make such baseless and unfounded allegations."

Kevin Kelley, executive vice president and chief operating officer for Station Casinos, defended the company's reputation as an employer in the statement.

"We are successful because we treat our team members with respect and provide a great working environment," he said. "As such, when unfounded allegations such as these are made by former team members represented by out-of-town class action lawyers, we take such matters very seriously."

Station says it will vigorously defend the lawsuit.

The gaming company would not disclose details about how its payroll system works.

Lukevich was an hourly room runner from 2005 to 2007 at Fiesta Henderson. Scott was an hourly guest service ambassador in the slot department for 12 years at Boulder Station and Texas Station. St. Cyr spent seven years as a blackjack dealer at Boulder Station, Palace Station and Sunset Station until March 2007.

Their attorney said he has already done extensive investigations, including interviews with past and current Station employees. He declined to say what the damages of his three named plaintiffs were estimated to be.

"I can't comment as to the number of Station employees interviewed," Jones added. "As for this policy, I am satisfied it goes back more than three years."

The law now allows plaintiffs to recover up to three years of damages, but Jones is confident his clients will be allowed to go back even further.

Jones said Station had a policy at its properties that allegedly involved discouraging overtime and failing to pay employees for all hours worked, and rewarding supervisors for enforcing it.

"This policy and failure and practice was effectuated, in part, by significantly 'rounding' the hourly employees' starting and ending times of employment for each shift, forward and backward," the complaint claims.

The issue of "rounding" hours is controversial in Nevada because it has never been ruled legal or illegal, some local employment lawyers said.

"I never recommend that my clients 'round,'" said Krystal Ginapp, an attorney with Hutchinson & Steffen. "Nevada law says you pay for hours worked. The (U.S. Department of Labor) says you can round as long as over the course of time you don't fail to pay the employee."

Mark Ricciardi, an employment lawyer who has represented other gaming companies, countered that rounding itself is not bad.

"Rounding is supposed to result, during the course of the year, in neither the employer or the employee being hurt," he said.

Ricciardi gave the example of a worker being six minutes late for a shift, but not losing any money because of his hours being rounded up. On the other hand, the same employee wouldn't get overtime for working six minutes extra, either.

Ginapp said the case could have implications beyond its outcome. Other workers, she said, may begin to wonder about their own paychecks.

"It could definitely start a whole host of class action lawsuits against casinos or employers in the valley," she said.

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## **EXHIBIT 28**

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# **XYIENCE(R) Announces \$12 Million Funding and Signing of Long Term UFC(R) Sponsorship**

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LAS VEGAS, Oct. 10 - XYIENCE(R) Inc. (pronounced zy-ince), one of the fastest growing brands in the beverage and nutritional supplements business, today announced that the company has received access to up to \$12 million in a strategic funding effort from a group of investors. The company intends to use a significant portion of the investment to expand distribution of its Xenergy brand energy drink. The name Xenergy is a combination of Zen and Energy and is pronounced "Zenergy".

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In just one year, Xenergy has increased distribution from 4,600 stores to 45,000 and can be found in such national retailers as 7-11, Kroger and GNC as well as in regional grocery and convenience stores around the country.

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XYIENCE recently introduced three new Xenergy flavors, Mango Guava, Pink Lemon and Blu Pom, which join the popular original flavors of Citrus Clear, Cran-Razz and Big Apple. Containing no calories, sugar or carbohydrates, Xenergy is formulated to provide clean, sustainable energy. Scientifically fortified with vitamins, the proprietary blend is designed to prevent the crash ending often associated with other energy drinks.

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XYIENCE also announced that the company's exclusive sponsorship relationship with the Ultimate Fighting Championship(R) (UFC(R)) has been extended for an additional three years. Xenergy is the official energy drink of the UFC(R), the world's leading professional mixed martial arts organization.

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"XYIENCE has been a long time sponsor of the UFC(R) and we look forward to our future endeavors together as both of our companies continue their explosive growth," said Dana White, UFC(R) President.

"We believe that the combination of new financing and the extension of our UFC(R) relationship firmly positions the company for success as we embark on a worldwide expansion of the XYIENCE and Xenergy brands," said Adam Frank, XYIENCE CEO.

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### **About XYIENCE(R)**

XYIENCE, one of the fastest growing brands in the health related category, utilizes advanced science in the development of nutritional products and supplements necessary for maintaining a dynamic lifestyle. XYIENCE offerings, including energy drinks and nutritional supplements, represent an authentic lifestyle that is both functional and fashionable. For more information, visit <http://www.xyience.com/>.

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Source: PRNewswire - Xyience, Inc.

# EXHIBIT E

Rich Bergeron  
147 OLD COUNTY ROAD  
East Sandwich, MA 02537  
Telephone: (617) 209-4325  
Defendant as Pro Se Attorney

E-FILED MARCH 24, 2008

**UNITED STATES BANKRUPTCY COURT**

**DISTRICT OF NEVADA**

In Re:

XYIENCE, INC., A Nevada Corporation

Debtor.

---

XYIENCE INCORPORATED, a  
Nevada Corporation,  
Plaintiff,

v.

RICHARD BERGERON, an individual  
Defendant.

---

RICHARD BERGERON, an  
individual,

Counterclaimant,

v.

XYIENCE INCORPORATED, a  
Nevada corporation; FERTITTA  
ENTERPRISES, INC., a Nevada  
corporation,

Counterdefendants.

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No. BK-S-08-10474-MKN  
Chapter 11

Eighth Judicial District Court  
Las Vegas, Clark County, Nevada  
Case No. A544781, Dept. XXIII

CASE NO. BK-2-08-AP-01082-MKN

**DEFENDANT AND  
COUNTERCLAIMANT'S THREE  
DAY NOTICE OF INTENT TO  
ENTER DEFAULT AGAINST  
COUNTER-DEFENDANTS  
XYIENCE (DEBTOR) AND  
FERTITTA ENTERPRISES**

Hearing Date: \_\_\_\_\_, 2008

Time: \_\_\_\_\_

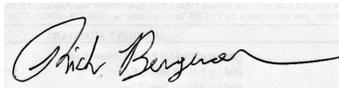
Location: 300 Las Vegas Blvd. South  
Courtroom #2  
Las Vegas, NV 89101

TO: Xyience, Inc., Counter-Defendant  
Fertitta Enterprises, Counter-Defendant

YOU AND EACH ONE OF YOU will please take notice that unless you answer or otherwise plead to the Summons and Complaint on behalf of Counter-Plaintiff Richard Bergeron, on file herein within (3) days of this Three Day Notice of Intent to Enter Default, the above-named Counter-Plaintiff will enter a default against you, the above-named counter-defendants, and request that the court enter a judgment against you, the counter-defendants, by default.

Dated this 24<sup>th</sup> Day of March, 2008

IN PROPER PERSON

A handwritten signature in black ink that reads "Rich Bergeron". The signature is written in a cursive style with a long, sweeping tail.

---

Rich Bergeron  
147 Old County Road  
East Sandwich, MA 02537  
617-209-4325  
Attorney Pro-Se  
[Rich.Bergeron@gmail.com](mailto:Rich.Bergeron@gmail.com)

Rich Bergeron  
147 OLD COUNTY ROAD  
**East Sandwich, MA 02537**  
Telephone: (617) 209-4325  
Defendant as Pro Se Attorney

E-FILED MARCH 24, 2008

**UNITED STATES BANKRUPTCY COURT**

**DISTRICT OF NEVADA**

In Re:

XYIENCE, INC., A Nevada Corporation

Debtor.

---

XYIENCE INCORPORATED, a  
Nevada Corporation,  
Plaintiff,

v.

RICHARD BERGERON, an individual  
Defendant.

---

RICHARD BERGERON, an  
individual,

Counterclaimant,

v.

XYIENCE INCORPORATED, a  
Nevada corporation; FERTITTA  
ENTERPRISES, INC., a Nevada  
corporation,

Counterdefendants.

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No. BK-S-08-10474-MKN  
Chapter 11

Eighth Judicial District Court  
Las Vegas, Clark County, Nevada  
Case No. A544781, Dept. XXIII

CASE NO. BK-2-08-AP-01082-MKN

**DEFENDANT AND  
COUNTERCLAIMANT'S  
APPLICATION FOR DEFAULT  
JUDGMENT ON  
COUNTERCLAIMS AGAINST  
XYIENCE, INCORPORATED AND  
FERTITTA ENTERPRISES**

Hearing Date: \_\_\_\_\_, 2008

Time: \_\_\_\_\_

Location: 300 Las Vegas Blvd. South  
Courtroom #2  
Las Vegas, NV 89101

Counter-Plaintiff Rich Bergeron moves this honorable Court to enter a default judgment in favor of Counter-Plaintiff and against the Counter-Defendants Xyience, Inc. and Fertitta Enterprises in the principal amount of \$1,000,000 and in the aggregate amount \$10,000,000 comprised of:

**\$1,000,000 for Bergeron's attorney fees and punitive damages sustained.**

**\$9,000,000 to be split among creditors, burned investors, and contracted employees/vendors/distributors/sponsored fighters.**

DEFENDANT AND CROSS-CLAIMANT BERGERON SHOULD RECEIVE PUNITIVE DAMAGES as a direct result of Cross-Defendants' Defamation of his character, violation of his First Amendment rights, tortuous interference with his prospective economic advantage, and the pain and suffering Bergeron has suffered due to the Cross-Defendants' pursuit of a frivolous case based on substantial misrepresentations of fact and manufactured evidence.

Defendant and Cross-Claimant Rich Bergeron is a seasoned journalist with impeccable credentials and an exceptional educational background including stints at three military colleges with honor codes. The Cross-Defendants identified in this pleading have been implicated in serious accusations of major fraud. Their track record reveals a pattern of continuous corruption tracing back to the inception of Xyience, Incorporated's sponsorship of the Ultimate Fighting Championship.

Bergeron has at all times printed the truth about the cross-defendants' business dealings and collusion to defraud investors. He deserves appropriate redress for being improperly and unconstitutionally enjoined from reporting that truth.

Defendant and Cross-Claimant Bergeron has endured a case against him filed in bad faith and with reckless disregard for the truth by the plaintiff Xyience, their initial attorney Jamie Cogburn, and both law firms to follow. There is a status check hearing for this case on the 23<sup>rd</sup> of April. However, due to the plaintiff's pending Bankruptcy fire sale, Fertitta Enterprises as a major creditor and defrauder of Xyience and this Court should also be held accountable for whatever penalties Xyience cannot afford should the Court choose to approve this default judgment.

This Application is made on the ground that a three-day notice of intent to enter default has been filed for the counter-defendants' failure to answer or otherwise defend as to the 2/19/08 counter-complaint. More than 20 business days have passed and neither Xyience's assigned counsel nor any Fertitta

Enterprises counsel have filed any opposition whatsoever to Bergeron's counterclaims. Fertitta Enterprises doesn't appear to even have any counsel assigned to the case despite being duly served.

Said notice of three-day notice of intent to enter default will be served on the counter-defendants by close of business on March 24, 2008. Should no answer or defense be offered in this case by both counter-defendants in time for close of business on March 27, 2008, a default order should be entered declaring the following:

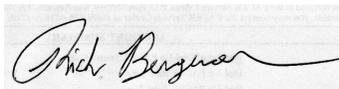
Bergeron will be awarded punitive damages as per the 2/19/08 counterclaim in the aggregate amount of \$10,000,000.00 for the cross-defendants' egregious violation of his First Amendment rights, tortious interference with his prospective economic advantage, defamation of his good name through the filing of a frivolous case, and the mental pain and suffering he has endured through the threat of a \$25 million judgment being entered against him in the pending case.

Bergeron will immediately collect \$1,000,000 for damages and reasonable attorney fees with the remaining \$9,000,000 he agrees to voluntarily set aside to pay for claims and damages for creditors of Xyience experiencing ongoing issues with delinquent Xyience debts. The Trustee of the estate shall divide these proceeds based on the priority of each claim. Should Xyience be unable to pay the proceeds of this judgment, Fertitta Enterprises will be expected to pay the difference.

In support of this application, Counter-Plaintiff Bergeron relies on all the records, papers, and pleadings on file within this case, particularly the February 19, 2008 Counter-Claim For Declaratory Relief.

Dated This 24<sup>th</sup> Day of March, 2008

IN PROPER PERSON



---

Rich Bergeron  
147 Old County Road  
East Sandwich, MA 02537  
617-209-4325  
Attorney Pro-Se  
[Rich.Bergeron@gmail.com](mailto:Rich.Bergeron@gmail.com)

# EXHIBIT F



This stack of papers is the volume of the pleadings in this case  
So far.