

SOLICITOR

TO: Commissioner of Patents P.O. Box 1450 Alexandria, VA 22313-1450 or Commissioner of Trademarks P.O. Box 1451 Alexandria, VA 22313-1451	OCT 13 2008 U.S. PATENT & TRADEMARK OFFICE REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Colorado on the following

DOCKET NO. 08-2069-ZLW-KLM	DATE FILED 9/25/2008	U.S. DISTRICT COURT FOR THE DISTRICT OF COLORADO
PLAINTIFF BROWN PALACE HOTEL ASSOCIATES LP		DEFENDANT BROWN'S PALACE LLC
PATENT OR	DATE OF PATENT	HOLDER OF PATENT OR TRADEMARK
1 2,693,210		Please see copy of Complaint attached hereto
2 2,693,211		
3 3,361,915		
4 3,359,490		
5		

In the above—entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
1			
2			
3			
4			
5			

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK GREGORY C. LANGHAM	(BY) DEPUTY CLERK	DATE
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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.

BROWN PALACE HOTEL ASSOCIATES LP,

Plaintiff,

vs.

BROWN'S PALACE LLC

Defendant.

COMPLAINT

Plaintiff Brown Palace Hotel Associates Limited Partnership, through its attorneys, states the following for its Complaint against Defendant Brown's Palace LLC.

INTRODUCTION

1. This is an action for trademark dilution, trademark infringement, false designation of origin, unfair competition, and related claims against Defendant, based on its unauthorized and unlawful use of Plaintiff's famous BROWN PALACE service mark. Plaintiff brings this action under the federal Lanham Act, the Colorado Consumer Protective Act, and common law to enjoin Defendant's unlawful conduct and for other relief as set forth herein.

PARTIES

2. Plaintiff Brown Palace Hotel Associates Limited Partnership is a limited partnership organized under the laws of the State of Connecticut having a principal place of business at 321 Seventeenth Street, Denver, Colorado, 80202.

3. Defendant Brown's Palace LLC, is a limited liability company organized under the laws of the State of Colorado having a principal place of business at 20794 E. Girard Place, Aurora, Colorado, 80013.

JURISDICTION AND VENUE

4. This action arises under the Lanham Act, 15 U.S.C. §§ 1501 *et seq.*, and supplemental state law. This Court has subject matter jurisdiction pursuant to 15 U.S.C. § 1121, and 28 U.S.C. §§ 1331, 1338, and 1367.

5. The Court has personal jurisdiction over the Defendant because it is a resident of Colorado and has committed the acts complained of herein in Colorado.

6. Venue in this district is proper under 28 U.S.C. §§ 1391(b) and (c), and 1400(b).

GENERAL ALLEGATIONS

Background on Plaintiff

7. Plaintiff Brown Palace Hotel Associates Limited Partnership ("Brown Palace" or "Plaintiff") owns and operates the BROWN PALACE hotel, one of the most famous and well-known hotels in the world.

8. The BROWN PALACE hotel has operated continuously from the day it first opened its doors to the public in 1892 to the present. From 1892 to the present,

Plaintiff and its predecessors have used the mark BROWN PALACE to refer exclusively to its world-famous hotel located in the heart of Denver, Colorado.

9. Over the last century, Plaintiff and its predecessors have expended enormous efforts and sums cultivating the fame and positive goodwill that exists in the BROWN PALACE mark. In addition to having been referenced in numerous publications, articles, and reviews of hotels and historical landmarks throughout the United States, the BROWN PALACE hotel has been visited by countless dignitaries, foreign heads of state, celebrities, and every U.S. President (save one) since Theodore Roosevelt.

10. Due to its exclusive and long-standing use in connection with Plaintiff's hotel, spa, and related services, the BROWN PALACE mark has become famous in the minds of the relevant public as identifying Plaintiff's services exclusively.

11. In recognition of Plaintiff's exclusive right to use the BROWN PALACE mark, the United States Patent and Trademark Office (USPTO) has granted Plaintiff four trademark registrations: THE BROWN PALACE HOTEL, Registration No. 2,693,210; THE BROWN PALACE HOTEL DENVER & Design, Registration No. 2,693,211; THE BROWN PALACE HOTEL DENVER & Design, Registration No. 3,361,915; and THE SPA AT THE BROWN PALACE, Registration No. 3,359,490.

12. Copies of Plaintiff's trademarks registrations are attached to this Complaint as *Exhibit 1* and incorporated herein by this reference.

Defendant's Infringing Conduct

13. Defendant has begun operating a business in the Denver suburb of Aurora, Colorado, that provides day-care services using the mark BROWN'S PALACE.

14. Defendant's service mark is nearly identical and thus confusingly similar to Plaintiff's famous BROWN PALACE service mark.

15. Due to the fame and distinctiveness of Plaintiff's BROWN PALACE mark, Defendant's use of the nearly identical mark BROWN'S PALACE is likely to cause dilution by blurring or tarnishment of the BROWN PALACE mark.

16. Due to the fame and distinctiveness of Plaintiff's BROWN PALACE mark, Defendant's use of the nearly identical mark BROWN'S PALACE is likely to confuse the relevant public into believing that Defendant's business is associated or affiliated in some way with Plaintiff and/or its famous BROWN PALACE hotel.

17. At no time has Plaintiff given Defendant consent, license, or authorization to use the marks BROWN PALACE or BROWN'S PALACE in connection with Defendant's services.

18. Given the fame of Plaintiff's BROWN PALACE mark as used in connection with Plaintiff's well-known hotel and related services, Defendant undoubtedly was well aware of the value and goodwill that Plaintiff has obtained in its marks. By choosing a nearly identical, confusingly similar mark for its services, Defendant's infringement and conduct in this case has been willful, and this case should be deemed exceptional.

19. Prior to filing this Complaint, Plaintiff contacted Defendant on several occasions requesting that Defendant select a different service mark for its business, even offering to reimburse its expenses and affording a reasonable time for Defendant to change to a different mark. Defendant has refused Plaintiff's offer, essentially stating that it wanted "more money" for Defendant to agree to stop using Plaintiff's famous BROWN PALACE service mark.

FIRST CLAIM FOR RELIEF
(TRADEMARK DILUTION UNDER § 43(c) OF THE LANHAM ACT)

20. Plaintiff re-alleges and incorporates by this reference the preceding allegations of the Complaint.

21. Plaintiff's marks THE BROWN PALACE HOTEL, THE BROWN PALACE HOTEL DENVER & Design, THE BROWN PALACE HOTEL DENVER & Design, and THE SPA AT THE BROWN PALACE are distinctive and famous under 15 U.S.C. § 1125(c).

22. Defendant's use of the mark BROWN'S PALACE is likely to cause dilution by blurring and/or tarnishment of Plaintiff's marks.

23. Upon information and belief, Defendant willfully intended to trade on the recognition of Plaintiff's famous marks.

24. Defendant's conduct has caused and continues to cause damage and irreparable injury to the value and goodwill of Plaintiff's marks THE BROWN PALACE HOTEL, THE BROWN PALACE HOTEL DENVER & Design, THE BROWN PALACE

HOTEL DENVER & Design, and THE SPA AT THE BROWN PALACE, as well as damages and irreparable injury to Plaintiff's business, goodwill, and reputation. Plaintiff has no adequate remedy at law because damages are continuing and difficult to ascertain.

25. Plaintiff is entitled to injunctive relief, attorneys' fees and costs, and other relief and set forth herein.

SECOND CLAIM FOR RELIEF
(TRADEMARK INFRINGEMENT UNDER § 32 OF THE LANHAM ACT)

26. Plaintiff re-alleges and incorporates by this reference the preceding allegations of the Complaint.

27. Plaintiff possesses valid registrations issued by the USPTO for THE BROWN PALACE HOTEL, THE BROWN PALACE HOTEL DENVER & Design, THE BROWN PALACE HOTEL DENVER & Design, and THE SPA AT THE BROWN PALACE, for the services set forth in the registrations. Copies of Plaintiff's trademark registrations are attached as *Exhibit 1*.

28. The Defendant's actions as described above, including Defendant's unauthorized use of the mark BROWN'S PALACE to identify and promote its services, are likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Defendant with Plaintiff, or as to the origin, sponsorship or approval of Defendant's services and products by Plaintiff. Defendant's conduct constitutes trademark infringement in violation of § 32 of the Lanham Act, 15 U.S.C. § 1114.

29. Defendant's trademark infringement has caused and continues to cause damage and irreparable injury to the value and goodwill of Plaintiff's trademarks, as well as damages and irreparable injury to Plaintiff's business, goodwill, and reputation. Plaintiff has no adequate remedy at law because damages are continuing and difficult to ascertain.

30. Defendant's continued use of the Plaintiff's marks is deliberate, willful, fraudulent, constitutes a knowing infringement of Plaintiff's marks, and makes this case exceptional.

THIRD CLAIM FOR RELIEF
(TRADEMARK INFRINGEMENT AND FALSE DESIGNATION UNDER
§ 43(a) OF THE LANHAM ACT)

31. Plaintiff re-alleges and incorporates by this reference the preceding allegations of the Complaint.

32. Plaintiff possesses valid and protectable rights in the mark BROWN PALACE, which is inherently distinctive and famous in connection with Plaintiff's hotel, spa, and related services.

33. The Defendant's actions as described herein, including Defendant's unauthorized use of the mark BROWN'S PALACE to identify and promote its services, are likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Defendant with Plaintiff, or as to the origin, sponsorship or approval of Defendant's goods and services by Plaintiff, in violation of Section 43(a)(1)(A) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A).

34. Defendant's false designation and representations have caused and continue to cause damage and irreparable injury to the value and goodwill of Plaintiff's marks, as well as damages and irreparable injury to Plaintiff's business, goodwill, and reputation. Plaintiff has no adequate remedy at law because damages are continuing and difficult to ascertain.

35. Defendant's continued use of the mark BROWN'S PALACE is deliberate, willful, fraudulent, constitutes a knowing infringement of Plaintiff's marks, and makes this case exceptional.

FOURTH CLAIM FOR RELIEF
(VIOLATION OF COLORADO CONSUMER PROTECTION ACT, C.R.S. § 6-1-101, *et seq.*)

36. Plaintiff re-alleges and incorporates by this reference the preceding allegations of the Complaint.

37. Defendant has engaged in deceptive trade practices in violation of Colo. Rev. Stat. § 6-1-105(a), (b), and (c).

38. In the course of its business, Defendant is passing off its services as being associated, affiliated, or originating with Plaintiff, and knowingly is making false representations as to the source, sponsorship, and approval of its services, and knowingly is making false representations as to the affiliation, connection, or association of its services with Plaintiff.

39. Defendant's deceptive trade practices have had and will continue to have a significant negative impact on the public as actual and potential consumers of Plaintiff's services.

40. Defendant's deceptive trade practices have caused and continue to cause irreparable injury to the value of Plaintiff's BROWN PALACE mark, as well as irreparable injury to Plaintiff's business, goodwill, and reputation. Plaintiff has no adequate remedy at law.

FIFTH CLAIM FOR RELIEF
(Common Law Trademark Infringement and Unfair Competition)

41. Plaintiff re-alleges and incorporates by this reference the preceding allegations of the Complaint.

42. Plaintiff possesses valid and protectable rights in the mark BROWN PALACE, which is inherently distinctive and famous in connection with Plaintiff's hotel, spa, and related services.

43. Defendant's actions as described herein, including Defendant's unauthorized use of the mark BROWN'S PALACE to identify its services, are likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Defendant with Plaintiff, or as to the origin, sponsorship or approval of Defendant's goods and services by Plaintiff, in violation of Plaintiff's common law trademark rights and the common law of unfair competition.

44. By reason of the foregoing, Plaintiff is entitled to injunctive relief against Defendant.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for entry of judgment in its favor and against the Defendant as follows:

- A. Declaring that Defendant has been and still is infringing Plaintiff's BROWN PALACE mark;
- B. Declaring that Defendant's conduct is likely to dilute by blurring or tarnishment Plaintiff's BROWN PALACE mark;
- C. Entering a temporary, preliminary, and permanent injunction against Defendant, and its officers, members, owners, directors, affiliates, agents, employees, successors in interest, and all those acting in concert or active participation with them, prohibiting them from offering or selling any goods or services bearing or in connection with the marks BROWN PALACE, BROWN'S PALACE, or any other mark confusingly similar thereto;
- D. Awarding to Plaintiff its attorneys' fees, costs, expert witness fees and expenses incurred by Plaintiff in connection with this action as provided for by applicable rule or law;
- E. Such other and further relief as the Court deems equitable and appropriate.

Dated this 25th day of September, 2008.

Respectfully submitted,

/s/ Timothy P. Getzoff

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**ATTORNEY FOR BROWN PALACE HOTEL
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