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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

HRHH HOTEL/CASINO, LLC and
HRHH IP, LLC

Plaintiffs,

v.

BELLA VITA, LLC, HENRI B. NAJEM, JR.,
and DOES 1-10, inclusive,

Defendants.

Case No. 1:15-cv-791

JURY TRIAL DEMANDED

**COMPLAINT FOR TRADEMARK INFRINGEMENT, FALSE DESIGNATION OF
ORIGIN, TRADEMARK DILUTION, AND UNFAIR COMPETITION**

Plaintiffs HRHH Hotel/Casino, LLC (“HRHH Hotel/Casino”) and HRHH IP, LLC (“HRHH IP”) (collectively “HRHH”) for their complaint against defendants Bella Vita, LLC (“Bella Vita”) and Henri B. Najem, Jr. (“Najem”) (collectively, “Defendants”), and Does 1-10, inclusive, allege as follows:

JURISDICTION AND VENUE

1. This action arises under the trademark and anti-dilution laws of the United States, 15 U.S.C. § 1051, *et seq.*, the trademark laws of the State of Indiana, Ind. Code § 24-2-1, and under the statutory and common law of unfair competition. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1338(a) and (b), 28 U.S.C. § 1367 and 15 U.S.C. § 1121. This action arises under the laws of the United States.

2. Venue is proper under 28 U.S.C. §§ 1391(b) and (c) in this case because Defendants reside in this District and, on information and belief, Defendants are subject to

personal jurisdiction in this District, and/or a substantial part of the events or omissions giving rise to occurred in this District.

PARTIES

3. Plaintiff HRHH Hotel/Casino is a Delaware limited liability company with its principal place of business in Las Vegas, Nevada. HRHH Hotel/Casino owns the Hard Rock Hotel & Casino Las Vegas located in Las Vegas, Nevada.

4. Plaintiff HRHH IP is a Delaware limited liability company with its principal place of business in Las Vegas, Nevada. HRHH IP owns certain intellectual property rights used in connection with the Hard Rock Hotel & Casino Las Vegas.

5. On information and belief, defendant Bella Vita is an Indiana limited liability company that has its principal place of business in Indianapolis Indiana, and does business in this District.

6. On information and belief, defendant Najem is an individual that resides in this District, has his principal place of business in Indianapolis, Indiana, and does business in this District. On information and belief, Najem is a managing member of Bella Vita and controls Bella Vita.

7. Defendants are subject to personal jurisdiction in this District because they do business in this District and/or HRHH's claims arose in this District.

8. The true names, identities and capacities, whether individual, associate, corporate or otherwise, of defendants DOES 1 to 10, inclusive, and each of them ("the DOE Defendants"), are unknown to HRHH at this time, who therefore sues the DOE Defendants by such fictitious names. When the true names and capacities or participation of the DOE Defendants are ascertained, HRHH will amend this complaint to assert their true names, identities and capacities. HRHH is informed and believes and thereon alleges that each of the DOE

Defendants sued herein is responsible for the wrongful acts alleged herein, and is therefore liable to HRHH in some manner for the events and happenings alleged in this complaint. HRHH is informed and believes and thereon alleges that at all times herein mentioned, the DOE Defendants were and are doing business and/or residing in this District.

FACTS

HRHH's Business and Trademarks

9. HRHH Hotel/Casino's Hard Rock Hotel & Casino Las Vegas is a world-renowned entertainment and vacation destination in Las Vegas, Nevada, and is a premier property that attracts a young, trendsetting, influential crowd.



10. The Hard Rock Hotel & Casino Las Vegas includes amenities and attractions like The Joint, Las Vegas's first live-music venue with a capacity 4,255 people; tens of thousands of square feet of convention and meeting space; several retail spaces; numerous restaurants, bars and clubs; gaming areas; and three towers of hotel rooms. The Hard Rock Hotel & Casino Las Vegas also features a complex of several pools.


11. HRHH is the creator and host of a daytime pool party held at the Hard Rock Hotel & Casino Las Vegas called "Rehab" (the "Rehab Pool Party"). The Hard Rock Hotel & Casino Las Vegas held the first Rehab Pool Party in 2004 and continues to hold the Rehab Pool Party to this day.

12. Since its inception, the Rehab Pool Party has been immensely popular. The Rehab Pool Party was initially held on Sundays only, and became famous for being the first Sunday pool party of its kind in Las Vegas. The Rehab Pool Party is now held multiple times a week at the Hard Rock Hotel & Casino Las Vegas's Rehab Pool. The Rehab Pool Party has been the subject of substantial marketing efforts and significant press coverage, has been attended by celebrities and other notables, and has featured performances by the some of the

world's most famous musical artists. The immense popularity of the Rehab Pool Party has spurred many other major resorts in Las Vegas to launch their own pool parties, and has created a new genre of entertainment in Las Vegas referred to as "daylife."

13. HRHH is the owner of certain intellectual property rights derived from the Rehab Pool Party including the trademark REHAB in block letters and in a distinctive, stylized font (collectively, the "REHAB Marks"). HRHH owns common law rights in and federal registrations of the following REHAB Marks:

<u>Mark</u>	<u>Reg. No.</u>	<u>Class(es)</u>	<u>Good(s) and/or Service(s)</u>
REHAB	3,873,673	41	Night clubs
REHAB	4,524,097	29, 41, 43	Prepared meals and entrees consisting primarily of eggs and vegetables; casino services; entertainment services, namely, conducting parties featuring live and recorded music, entertainment, food and beverages; night club services; dayclub services, namely, providing facilities for recreational activities, namely, poolside and water activities; hotel and resort services; restaurant services; bar services; catering services
REHAB RX	4,611,979	41	Casino services; entertainment services, namely, conducting parties featuring live and recorded music, entertainment, food and beverages; night club services; dayclub services, namely, providing facilities for recreational activities, namely, poolside and water activities
	3,182,848	41	Seasonal poolside party held weekly with food, drinks and entertainment
	4,615,774	41, 43	Casino services; entertainment services, namely, conducting parties featuring live and recorded music, entertainment, food and beverages; night club services; dayclub services, namely, providing facilities for recreational activities, namely, poolside and water activities; hotel and resort services; restaurant services; bar services; catering services

<u>Mark</u>	<u>Reg. No.</u>	<u>Class(es)</u>	<u>Good(s) and/or Service(s)</u>
	3,170,859	41	Seasonal poolside party held weekly with food, drinks and entertainment

True and correct copies of the certificates of registration for the REHAB Marks are attached hereto as **Exhibit A**.

14. HRHH has licensed the REHAB Marks to third parties and has used the REHAB Marks for clothing and other merchandise including, but not limited, towels, dog tags, belt buckles, sun tan lotion, necklaces, wristbands, cowboys hats, pins, cameras, key chains, bandanas, insulated containers for beverages, and beverageware. In or around November 2008, a television show based on the Rehab Pool Party, entitled *Rehab: Party at the Hard Rock Hotel*, premiered on cable network TruTV (the “Rehab Show”). The popular reality television show aired for three seasons.

15. By virtue of the popularity of the Rehab Pool Party, the REHAB-branded merchandise, the Rehab Show, and the significant publicity and news coverage relating to the Rehab Pool Party, among other things, the REHAB Marks have developed secondary meaning in the marketplace and have become famous.

Defendants’ and Their Infringing Actions

16. On information and belief, Bella Vita is a company engaged in the business of providing, among other things, restaurant, bar and related entertainment services. On information and belief, Bella Vita is the owner of Bella Vita Lakeside restaurant and bar in Indianapolis, Indiana.

17. On information and belief, Bella Vita organizes and hosts weekly pool parties called “Rehab+ Sundays,” which are held at the Bella Vita restaurant and bar in Indianapolis,

Indiana and are marketed using a logo that is confusingly similar to HRHH's famous REHAB Marks:



On information and belief, Bella Vita sells tickets to its "Rehab+ Sundays," including tickets for premium cabana rentals, and uses the pool party to promote the Bella Vita Lakeside restaurant and bar and Bella Vita's related goods and services.

18. After HRHH became aware of Defendants' unauthorized use and infringement of the REHAB Marks, HRHH sent letters to Defendants demanding that they immediately cease their infringing activities.

19. Defendants have refused to cease their infringing use and, on information and belief, intend to continue to organize and host "Rehab+ Sundays" pool parties in the Summer of 2015:



FIRST CAUSE OF ACTION

(False Designation of Origin and Unfair Competition – 15 U.S.C § 1125(a))

20. HRHH repeats and realleges each and every allegation of paragraphs 1 through 19, above, as though fully set forth herein.

21. Defendants' use of REHAB and REHAB+ SUNDAYS in connection with their pool parties is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Defendants with HRHH and its REHAB Marks, or as to the origin, sponsorship, or approval of Defendants' unauthorized pool party, restaurant and bar, and other goods and services related thereto by HRHH.

22. Defendants' acts of false designation of origin, affiliation, association, or sponsorship and unfair competition violate 15 U.S.C. § 1125(a).

23. As a direct and proximate result of Defendants' wrongful acts, HRHH has suffered and continues to suffer and/or is likely to suffer damage to its trademarks, business reputation, and goodwill. Defendants will continue to use or, as applicable, recommence use, unless restrained, of REHAB for their pool parties, restaurant and bar, and other goods and

services related thereto, which is confusingly similar to HRHH's REHAB Marks and likely to be associated with HRHH, the Hard Rock Hotel & Casino Las Vegas, and the Rehab Pool Party. Such conduct will cause irreparable damage to HRHH. HRHH has no adequate remedy at law and is entitled to an injunction restraining Defendants, their officers, agents, and employees, and all persons acting in concert with Defendants, from engaging in further acts of false designation of origin, affiliation, association, or sponsorship.

24. HRHH is further entitled to recover from Defendants the actual damages that it sustained and/or is likely to sustain as a result of Defendants' wrongful acts. HRHH is presently unable to ascertain the full extent of the monetary damages that it has suffered and/or is likely to sustain by reason of Defendants' acts of false designation of origin, affiliation, association, or sponsorship.

25. HRHH is further entitled to recover from Defendants the gains, profits, and advantages that Defendants have obtained as a result of their wrongful acts. HRHH is presently unable to ascertain the extent of the gains, profits, and advantages that Defendants have realized by reason of their acts of false designation of origin, affiliation, association, or sponsorship.

26. Because of the willful nature of Defendants' wrongful acts, HRHH is entitled to an award of treble damages and increased profits pursuant to 15 U.S.C. § 1117 and destruction of any physical goods bearing the REHAB mark under 15 U.S.C. § 1118.

27. HRHH is also entitled to recover its attorneys' fees and costs of suit pursuant to 15 U.S.C. § 1117.

SECOND CAUSE OF ACTION

(Trademark Infringement – 15 U.S.C. § 1114, Ind. Code § 24-2-1-13, and Common Law)

28. HRHH repeats and realleges each and every allegation of paragraphs 1 through 27, above, as though fully set forth herein.

29. Defendants have used in commerce, without HRHH's permission, the REHAB Marks and/or marks confusingly similar thereto, in connection with the sale, offering for sale, distribution, or advertising their pool parties, restaurant and bar, and other goods and services related thereto in a manner that is likely to cause confusion with respect to the source and origin of Defendants' goods and services and is likely to cause confusion or mistake and to deceive purchasers as to the affiliation, connection, approval, sponsorship, or association of HRHH, the Hard Rock Hotel & Casino Las Vegas, and the Rehab Pool Party with Defendants and their goods and services.

30. Defendants' acts constitute infringement of the REHAB Marks in violation of the 15 U.S.C. § 1114, Ind. Code § 24-2-1-13, and the common law.

31. As a direct and proximate result of Defendants' wrongful acts, HRHH has suffered and continues to suffer and/or is likely to suffer damage to its trademarks, business reputation, and goodwill. Defendants will continue to use or, as applicable, recommence use, unless restrained, of REHAB or other marks confusingly similar to the REHAB Marks and will cause irreparable damage to HRHH. HRHH has no adequate remedy at law and is entitled to an injunction restraining Defendants, their officers, agents, servants, and employees, and all persons acting in concert with Defendants, from engaging in further acts of infringement.

32. HRHH is further entitled to recover from Defendants the actual damages that it sustained and/or is likely to sustain as a result of Defendants' wrongful acts. HRHH is presently unable to ascertain the full extent of the monetary damages that it has suffered and/or is likely to sustain by reason of Defendants' acts of infringement.

33. HRHH is further entitled to recover from Defendants the gains, profits, and advantages that Defendants have obtained as a result of their wrongful acts. HRHH is presently

unable to ascertain the extent of the gains, profits, and advantages that Defendants have realized by reason of their acts of infringement.

34. Because of the knowing and willful nature of Defendants' wrongful acts, HRHH is entitled to an award of treble damages and increased profits under 15 U.S.C. § 1117 and Ind. Code § 24-2-1-14.

35. HRHH is also entitled to recover its attorneys' fees and costs of suit pursuant to 15 U.S.C. § 1117 and Ind. Code § 24-2-1-14.

THIRD CAUSE OF ACTION

(Dilution – 15 U.S.C. § 1125(c))

36. HRHH repeats and realleges each and every allegation of paragraphs 1 through 35, above, as though fully set forth herein.

37. HRHH's REHAB Marks are inherently distinctive and have acquired distinctiveness through HRHH's extensive, continuous, and exclusive use of them and the amount, volume, and geographic extent of sales of goods and services offered under the marks.

38. HRHH's REHAB Marks have attained a high degree of actual recognition amongst the public.

39. HRHH owns federal registrations of the REHAB Marks on the Principal Register.

40. HRHH's REHAB Marks are famous and distinctive within the meaning of 15 U.S.C. §§ 1125(c)(1) and became famous prior to Defendants' first use in commerce of REHAB for their pool parties, restaurant and bars, and related goods and services.

41. Defendants' use of REHAB is likely to impair the distinctiveness of, and harm the reputation of or tarnish, HRHH's REHAB Marks in violation of 15 U.S.C. § 1125(c).

42. Defendants' acts complained of herein are likely to damage HRHH irreparably. HRHH has no adequate remedy at law for such wrongs and injuries. The damage to HRHH

includes harm to its trademarks, goodwill, and reputation that money cannot compensate.

HRHH is, therefore, entitled to a preliminary and permanent injunction enjoining Defendants' use of REHAB, the REHAB Marks, or any marks confusingly similar thereto or dilutive thereof in connection with the promotion, advertisement, and sale of any products or services offered by Defendants.

43. HRHH is further entitled to recover from Defendants its actual damages sustained by HRHH as a result of Defendants' wrongful acts. HRHH is presently unable to ascertain the full extent of the monetary damages it has suffered by reason of Defendants' acts of dilution.

44. HRHH is further entitled to recover from Defendants the gains, profits, and advantages Defendants have obtained as a result of their wrongful acts. HRHH is presently unable to ascertain the extent of the gains, profits, and advantages Defendants have realized by reason of their willful acts of dilution. Because of the knowing and willful nature of Defendants' actions, HRHH is entitled to all remedies available under 15 U.S.C. §§ 1117 and 1118.

45. HRHH is also entitled to recover its attorneys' fees and costs of suit pursuant to 15 U.S.C. § 1117.

FOURTH CAUSE OF ACTION

(Unfair Competition)

46. HRHH repeats and realleges each and every allegation of paragraphs 1 through 45, above, as though fully set forth herein.

47. Defendants' acts, practices, and conduct, as alleged herein, constitute unfair competition under the laws of the State of Indiana in that Defendants are likely to cause a likelihood of confusion, mistake, or misunderstanding as to the source or origins of Defendants' goods and services.

48. In addition to the other acts alleged herein, Defendants have engaged in unfair acts by passing off or suggesting that their pool party, restaurant and bar, and other goods and services related thereto are associated, connected, or affiliated with, or sponsored or endorsed by, HRHH and by using names owned by HRHH.

49. HRHH invested substantial time or money in the development of the Rehab Pool Party and the REHAB Marks, and Defendants used the foregoing to create, market, advertise, and sell their pool party, restaurant and bar, and other goods and services related thereto. Defendants have appropriated the foregoing without authorization from HRHH.

50. Defendants' acts complained of herein have damaged and will continue to damage HRHH irreparably. HRHH has no adequate remedy at law for these wrongs and injuries. The damage to HRHH includes harm to the REHAB Marks, goodwill, and reputation in the marketplace that money cannot compensate. HRHH is therefore entitled to: (a) injunctive relief restraining and enjoining Defendants and their officers, agents, servants, and employees, and all persons acting thereunder, in concert with, or on their behalf, from using the REHAB Marks or any mark, name, symbol, or logo which is confusingly similar thereto, in connection with the marketing or sale of any goods or services by Defendants; (b) HRHH's actual damages sustained as a result of Defendants' wrongful acts; (c) an accounting of Defendants' profits derived from its infringing actions; (d) the award of Defendants' unjust profits, as well as sums sufficient to compensate HRHH for all harm suffered as a result of Defendants' conduct; and (e) punitive damages.

PRAYER FOR RELIEF

WHEREFORE, HRHH prays that this Court enter judgment against Defendants as follows:

1. Finding that Defendants have violated 15 U.S.C. § 1125(a), have infringed the REHAB Marks under the common law, 15 U.S.C. § 1114, and Ind. Code § 24-2-1-13, have violated 15 U.S.C. § 1125(c)(1) by diluting the REHAB Marks, and have violated the common law by engaging in unfair competition;

2. Ordering that Defendants and, as applicable, their officers, agents, servants, directors, employees, servants, partners, representatives, assigns, successors, related companies, and attorneys and all persons in active concert or participation with Defendants or with any of the foregoing be enjoined preliminarily during the pendency of this action and permanently thereafter from:

a. Manufacturing, transporting, promoting, importing, advertising, publicizing, distributing, offering for sale, or selling any goods or services bearing or offered under REHAB, the REHAB Marks, or any other mark, name, symbol, or logo which is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Defendants with HRHH or as to the origin, sponsorship, or approval by HRHH of any goods or services manufactured, transported, promoted, imported, advertised, publicized, distributed, offered for sale, or sold by Defendants – including, but not limited to, Defendants’ pool party, restaurant and bar, and any other goods and services related thereto;

b. Manufacturing, transporting, promoting, importing, advertising, publicizing, distributing, offering for sale, or selling any goods or services bearing or offered under REHAB, the REHAB Marks, or any other mark, name, symbol, or logo that is a copy or colorable imitation of, incorporates, or is confusingly similar to the REHAB Marks;

c. Implying HRHH’s approval, affiliation, connection, or sponsorship of Defendants’ goods, services, or commercial activities or engaging in any act or series of acts

which, either alone or in combination, constitutes unfair methods of competition with HRHH and from otherwise interfering with or injuring the REHAB Marks or the goodwill associated therewith;

d. Engaging in any act which is likely to dilute the distinctive quality of the REHAB Marks and/or injures HRHH's business reputation;

e. Representing or implying that Defendants are in any way sponsored, endorsed, or licensed by, or affiliated with, HRHH; or

f. Knowingly assisting, inducing, aiding, or abetting any other person or business entity in engaging in or performing any of the activities referred to in paragraphs 2(a) to (e) above.

3. Ordering that HRHH is the exclusive owner of the REHAB Marks and that such marks are valid and protectable;

4. Ordering that Defendants be required to deliver to HRHH or destroy, as applicable, all goods, packaging therefor, electronic images or media in any format, promotional materials, advertisements or marketing materials which bear REHAB, the REHAB Marks or any other trademarks, names, images logo, or packaging that are confusingly similar to the REHAB Marks or are evocative of or draw an association, affiliation, or connection with HRHH or the Rehab Pool Party.

5. Granting an award of damages suffered by HRHH according to proof at the time of trial;

6. Ordering that Defendants account to HRHH for any and all profits earned as a result of Defendants' acts of infringement in violation of HRHH's rights under the Lanham Act, the Indiana Code, and the common law;

7. Granting an award of three times the amount of actual damages and increased profits pursuant to 15 U.S.C. § 1117 and Ind. Code § 24-2-1-14;
8. Granting an award of punitive damages for Defendants' willful and wanton conduct;
9. For pre-judgment interest on any recovery by HRHH;
10. Granting an award of HRHH's costs, expenses, and reasonable attorneys' fees;
- and
11. Granting such other and further relief as is just and proper.

JURY DEMAND

HRHH demands a trial by jury of all issues triable by jury.

Respectfully submitted,

Dated: May 20, 2015

s/Craig E. Pinkus
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