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**U.S. District Court
DISTRICT OF ARIZONA (Phoenix Division)
CIVIL DOCKET FOR CASE #: 2:12-cv-01735-DGC
Internal Use Only**

Best Western International Incorporated v. Nevada
Motel Partners LLC et al
Assigned to: Judge David G Campbell
Demand: \$12,000
Cause: 15:1125 Trademark Infringement (Lanham Act)

Date Filed: 08/14/2012
Jury Demand: None
Nature of Suit: 840 Property Rights:
Trademark
Jurisdiction: Federal Question

Plaintiff

**Best Western International
Incorporated**
an Arizona non-profit corporation

represented by **Michelle Lynn Swann**
Schneider & Onofry PC
3101 N Central Ave., Ste. 600
Phoenix, AZ 85012-2658
602-200-1287
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Trademark		
677,103	1,432,431	2,140,332
914,812	1,515,712	2,665,955
914,813	1,900,620	2,869,617
1,072,360	1,933,830	3,107,814
1,074,300	2,116,079	3,080,655
1,427,735	2,105,546	3,083,667
V.		3,020,526

Defendant

Nevada Motel Partners LLC
a Nevada limited liability company

Defendant

Parmbir Mann
a California resident

Date Filed	#	Docket Text
08/14/2012	<u>3</u> <u>1</u>	COMPLAINT. Filing fee received: \$350.00, receipt number PHX 0970-7117646, filed by Best Western International Incorporated (submitted by Michelle Swann). (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Civil Cover Sheet)(REK) (Entered: 08/14/2012)

08/14/2012	2	SUMMONS Submitted by Best Western International Incorporated (submitted by Michelle Swann). (Attachments: # <u>1</u> Summons)(REK) (Entered: 08/14/2012)
08/14/2012	3	Corporate Disclosure Statement by Best Western International Incorporated (submitted by Michelle Swann). (REK) (Entered: 08/14/2012)
08/14/2012	4	Filing fee paid, receipt number PHX 0970-7117646. This case has been assigned to the Honorable David G. Campbell. All future pleadings or documents should bear the correct case number: CV 12-01735-PHX-DGC. Notice of Availability of Magistrate Judge to Exercise Jurisdiction form attached. (REK) (Entered: 08/14/2012)
08/14/2012	5	Summons Issued as to Parmbir Mann, Nevada Motel Partners LLC. (Attachments: # <u>1</u> Summons)(REK). *** IMPORTANT: When printing the summons, select "Document and stamps" or "Document and comments" for the seal to appear on the document. (Entered: 08/14/2012)

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9 **IN THE UNITED STATES DISTRICT COURT**
10 **IN AND FOR THE DISTRICT OF ARIZONA**

11 Best Western International, Inc., an
12 Arizona non-profit corporation,

13 Plaintiff,

14 vs.

15 Nevada Motel Partners, LLC, a Nevada
16 limited liability company; and Parmbir
17 Mann, a California resident,

18 Defendants.

No.

Verified Complaint

19 Plaintiff Best Western International, Inc. ("Best Western"), for its Verified
20 Complaint against Defendants Nevada Motel Partners, LLC, a Nevada limited liability
21 company, and Parmbir Mann, a California resident, alleges as follows:

22 **NATURE OF THE ACTION**

23 1. This is an action for unfair competition and trademark dilution in
24 violation of federal and state law.

25 2. Defendants have also failed to pay amounts owing to Best Western on
26 an open and stated account, constituting a violation of common law and a breach of
contract, and Defendants were unjustly enriched.

1 significant, direct harm and effect on Best Western, an American corporation engaged in
2 commerce in the United States, Canada, and worldwide; (4) Defendants' continued use of
3 the Best Western Symbols, a business name representing quality and reputation that is sold
4 for use by others, wrongfully capitalizes on the goodwill and reputation of Best Western;
5 (5) if the Best Western name is diluted and the reputation tainted, all Best Western
6 members and customers are adversely impacted; (6) Defendants have caused events to
7 occur and injuries to result in the State of Arizona; and (7) Defendants aimed their conduct
8 at Best Western knowing that Best Western is located in Arizona, and harming Best
9 Western in Arizona. *See* Membership Application and Agreement, attached here as
10 Exhibit 1, Paragraphs 37-38.

11
12
13 **GENERAL ALLEGATIONS**

14
15 9. Best Western operates as a membership organization consisting of
16 individually owned and operated hotels (i.e., its members). The rights and obligations of
17 Best Western's members are determined by the membership and are set forth in the
18 Membership Agreement, Best Western's Bylaws & Articles (the "Bylaws"), Best
19 Western's Rules and Regulations (the "Rules and Regulations"), and other Best Western
20 "Regulatory Documents" as that term is defined in Best Western's Bylaws (collectively the
21 "Regulatory Documents").

22
23 10. Best Western provides its members with a worldwide reservation
24 system and worldwide marketing campaigns, as well as an option to participate in
25 collective purchasing of hotel equipment, furnishings, and supplies (the "Best Western
26

1 Services”). Best Western employs a large number of employees worldwide who are
2 dedicated to providing member hotels with the Best Western Services.

3
4 11. Each Best Western member is authorized to use the trade name,
5 trademarks, service marks, logos, and other intellectual property and similar identifying
6 symbols owned by Best Western (the “Best Western Symbols”) in connection with its
7 hotel pursuant to a limited, non-exclusive license (the “Best Western License”), which is
8 set forth in the Membership Agreement. *See* Membership Agreement at ¶¶ 1, 19-26.

9
10 12. In exchange for receiving the Best Western Services and use of the
11 Best Western License, Best Western members are obligated to, among other things, pay
12 annual dues, membership fees, and other assessments. The membership fees are due
13 December 1 of each year and are billed in monthly installments over the course of the
14 following year to accommodate members. Annual dues are charged in August of each
15 year. All other dues, fees and assessments are billed monthly. Pursuant to Best Western
16 Bylaws Article II, Section 5 (B), if a member resigns or is terminated, fees and dues for the
17 remainder of the fiscal year will become immediately due and payable.

18
19
20 13. Best Western first adopted “Best Western” as its trade name in 1947.
21 Shortly thereafter, Best Western adopted and began using “Best Western” as a trademark
22 identifying hotel services provided by member hotels affiliated with Best Western. Best
23 Western has continuously and extensively promoted its trade name and trademark in
24 interstate commerce since 1947. As a result of this extensive promotion, the trade name
25 and trademark have become famous among consumers as a source-identifying symbol.
26

1 14. Since 1959, Best Western has registered with the United States Patent
2 and Trademark Office (“USPTO”) various trademarks, service marks, and collective
3 membership marks. On April 14, 1959, the Best Western logo was first registered as a
4 service mark by the USPTO under Registration No. 677,103. Best Western has developed
5 the Best Western Symbols at great expense over the past decades.
6

7 15. Best Western owns the following registrations for the Best Western
8 Symbols and the marks referenced in these registrations:
9

10 (a) a Best Western logo was registered as a collective membership
11 mark by the USPTO on June 8, 1971, under Registration No. 914,812, which was
12 registered to Western Motels, Inc., but assigned to Best Western International, Inc. in
13 1979, and is still active;
14

15 (b) a Best Western logo was registered as a service mark by the
16 USPTO on June 8, 1971, under Registration No. 914,813, which was registered to Western
17 Motels, Inc., but assigned to Best Western International, Inc. in 1979, and is still active;
18

19 (c) a Best Western logo was registered as a service mark by the
20 USPTO on August 30, 1977, under Registration No. 1,072,360;

21 (d) a Best Western logo was registered as a collective membership
22 mark by the USPTO on September 27, 1977, under Registration No. 1,074,300 to Best
23 Western, Inc. and assigned to Best Western International, Inc. in 1979, and is still active;
24

25 (e) the Best Western word mark was registered by the USPTO as a
26 service mark on February 3, 1987, under Registration No. 1,427,735;

1 (f) the Best Western word mark was registered by the USPTO as a
2 collective service mark on March 10, 1987, under Registration No. 1,432,431;

3 (g) the Best Western crown logo design was registered by the
4 USPTO as a service mark on December 6, 1988, under Registration No. 1,515,712;

5 (h) Best Western's current logo was registered by the USPTO as a
6 trademark on June 20, 1995, under Registration No. 1,900,620;

7 (i) Best Western's current logo was registered by the USPTO as a
8 service mark on November 7, 1995, as Registration No. 1,933,830;

9 (j) Best Western's current logo was registered by the USPTO as a
10 service mark on November 25, 1997, as Registration No. 2,116,079;

11 (k) Best Western's current logo was registered by the USPTO as a
12 service mark on October 14, 1997, as Registration No. 2,105,546;

13 (l) Best Western's current logo was registered by the USPTO as a
14 service mark on March 3, 1998, as Registration No. 2,140,332;

15 (m) the Best Western globe and pillow logo design was registered
16 by the USPTO as a service mark on December 24, 2002, as Registration No. 2,665,955;

17 (n) the BEST WESTERN word mark was registered by the
18 USPTO as a service mark on August 3, 2004, under Registration No. 2,869,617;

19 (o) the BESTWESTERN.COM word mark was registered by the
20 USPTO as a service mark on April 19, 2005, under Registration Nos. 3,107,814, 3,080,655
21 and 3,083,667;
22
23
24
25
26

1 (p) BW was registered by the USPTO as a service mark on
2 November 29, 2005, under Registration No. 3,020,526; and

3 (q) Best Western has registered a variety of other designs and
4 phrases as service marks in connection with the trade of hotel and motel lodging, many of
5 which incorporate the words BEST WESTERN.
6

7 16. All of the registrations described above are currently in full force and
8 effect, unrevoked, and uncanceled. Several of the above listed federal registrations for the
9 Best Western word mark and logo have become incontestable under 15 U.S.C. § 1065.
10

11 17. The Best Western Symbols are inherently distinctive and possess
12 strong secondary meaning.

13 18. The Membership Agreement and Regulatory Documents establish the
14 minimum standard quality assurance and inspection scores that each member must meet in
15 order to achieve and maintain membership. As a result, consumers worldwide associate
16 the Best Western Symbols with high quality in the hotel/motel industry.
17

18 19. A key element of Best Western's branding effort is the display of the
19 Best Western Symbols on the premises of member hotels through signs, publications, and
20 other public displays.
21

22 20. Upon default by a member of certain of its obligations to Best
23 Western, including obligations set forth in the Membership Agreement and Regulatory
24 Documents, the Best Western Board of Directors ("Board") may terminate the membership
25 and the Best Western License.
26

1 21. Within 15 days following the termination of membership, the former
2 member must cease and desist from using, and remove from public view, all Best Western
3 Symbols and all references to Best Western. The former member is also required to cease
4 and desist from using any item that is similar to the Best Western Symbols in spelling,
5 sound, appearance, or in any other manner. *See* Membership Agreement at ¶ 22.

7 **DEFENDANT'S BEST WESTERN MEMBERSHIP**

8 22. On or about July 7, 2009, Defendants executed the Membership
9 Agreement attached hereto as Exhibit 1 with Defendant Nevada Hotel Partners, LLC
10 (“Nevada Hotel”) designated as the owner of the hotel receiving the Best Western
11 membership.

12 23. Pursuant to the Membership Agreement, Defendants received a Best
13 Western membership for the hotel formerly known as the Best Western Minden Inn
14 located in Minden, Nevada, referenced in Best Western’s records as property #29065 (the
15 “Hotel”).

16 24. On April 7, 2011, Defendant Nevada Hotel designated Defendant
17 Mann as the Voting Member for the Hotel, rendering Defendant Mann jointly and
18 severally liable for all obligations under the Membership Agreement and Regulatory
19 Documents. *See* Exhibit 2.

20 25. Through the Membership Agreement and the Regulatory Documents,
21 Defendants agreed to timely pay all fees, dues, charges, and assessments imposed
22 generally on the membership by the Board and to promptly pay the costs of all goods or
23
24
25
26

1 services provided by or ordered through Best Western, including that past due amounts
2 would bear interest at the rate of one and one-half percent (1.5%) per month from the date
3 due until paid.
4

5 26. Among other things, the Membership Agreement grants the Best
6 Western member a limited, non-exclusive Best Western License, thereby allowing the
7 member to use the Best Western Symbols in connection with the Hotel, subject to the
8 terms of the Best Western License, and only for the duration of the Best Western License.
9

10 27. Termination of the Best Western Membership results in termination of
11 the Best Western License, and imposes the obligation to “*remove* from public view and
12 cease using” all Best Western Symbols and all other references to Best Western within 15
13 days of the date of termination. *See* Membership Agreement at ¶ 22.
14

15 28. Upon termination of the Best Western License, the former member(s)
16 must “actively take steps as may be necessary to cause the cessation of all advertising and
17 distribution of promotional material containing any Best Western Symbol.” *See*
18 Membership Agreement at ¶ 22.
19

20 29. Upon termination of the Best Western License, the former member(s)
21 must not use “anything consisting of or incorporating any one or more words, letters,
22 designs or devices which contain any part of any Best Western Symbol, or which singly or
23 together are similar in spelling, sound, appearance or otherwise to any Best Western
24 Symbol.” *See* Membership Agreement at ¶ 23.
25
26

1 30. The Regulatory Documents also state that:

2 Upon termination or cancellation of membership, the former
3 Best Western member *shall remove the Best Western sign*
4 *When the sign cabinet is removed, it must be destroyed or*
5 *modified so that the top of the cabinet has no curvilinear*
6 *features* The cost of removal of Best Western
7 identification upon termination shall be the responsibility of the
8 former member.

9 See Rules and Regulations, Section 300.6, attached here as Exhibit 3.

10 31. The Hotel could not meet the design and quality requirements of Best
11 Western and on February 28, 2011 the Hotel was granted a conditional extension in lieu of
12 terminating the Best Western membership.

13 32. Defendants' Best Western membership terminated effective February
14 28, 2012 because the Hotel failed to meet the requirements of the conditional extension
15 and Best Western's standards.

16 33. Upon termination, Best Western notified Defendants that, in
17 accordance with applicable provisions of the Membership Agreement and Regulatory
18 Documents, Defendants were required to discontinue use of the Best Western Symbols on
19 or before March 14, 2012. See Exhibit 4.

20 34. On May 23, 2012, Best Western notified Defendants that it had
21 discovered that Defendants continued to wrongfully display Best Western Symbols at the
22 Hotel and failed to remove the curvilinear sign cabinet as required by the Membership
23 Agreement and Regulatory Documents, and Best Western demanded that Defendants
24 satisfy their open account balance. See Exhibit 5.
25
26

1 35. The May 23, 2012 letter also reminded Defendants that their use of the
2 Best Western Symbols at the Hotel or in advertising for the Hotel subjected Defendants to
3 liquidated damages calculated pursuant to the Membership Agreement. *Id.*
4

5 36. On or about July 12, 2012, Best Western discovered that Defendants'
6 Hotel continued to use Best Western's Symbols on a billboard advertising the Hotel and on
7 toiletry items at the Hotel, and Defendants failed to remove the curvilinear sign cabinet as
8 required by the Membership Agreement and Regulatory Documents. *See Exhibit 6.*
9

10 37. On July 20, 2012, counsel for Best Western notified Defendants that
11 they had failed to satisfy their open and stated account with Best Western, at which point
12 they owed \$11,073.92, and demanded that Defendants cease and desist use of any Best
13 Western Symbols. *See Exhibit 7.*
14

15 38. Defendants failed to pay the open account balance owed to Best
16 Western, as requested in the May 23, 2012 or July 20, 2012 demand letters.

17 39. Numerous travel-related websites continued to advertise the Hotel as a
18 Best Western member property as late as August 3, 2012 despite that the membership
19 terminated effective April 5, 2011. *See Exhibit 8.*
20

21 40. The internet advertisements violate the terms of the Membership
22 Agreement and Regulatory Documents.

23 41. As of August 1, 2012, Defendants owed Best Western no less than
24 \$12,351.24 on the open account that Defendants had while a Best Western member, which
25 represents certain fees and other charges imposed on the Hotel as a Best Western member.
26

1 See Invoices dated November 1, 2011 to August 1, 2012, attached hereto as Exhibit 9.

2 42. Best Western fully performed all of its obligations under the
3 Membership Agreement.
4

5 43. Defendants have refused and continue to refuse to pay to Best Western
6 the amounts due and owing to it on their delinquent open and stated account under the
7 express terms of the Membership Agreement.
8

9 44. Defendants have refused and continue to refuse to pay to Best Western
10 the amounts due and owing to it for the liquidated damages owed under the express terms
11 of the Membership Agreement.
12

13 45. Defendants have refused and continue to refuse to actively take steps
14 as may be necessary to cause the cessation of all advertising and distribution of
15 promotional material containing any Best Western Symbol, including the advertisements at
16 the websites, which has the result of potentially diverting travelers from nearby Best
17 Western members to the Hotel.
18

19 **COUNT I – BREACH OF CONTRACT**

20 46. Best Western incorporates by reference the allegations contained in
21 paragraphs 1 through 44 above as though fully set forth herein.
22

23 47. Defendants have refused and continue to refuse to pay to Best Western
24 the amounts due and owing as required by the Membership Agreement.
25

26 ///

///

1 55. Pursuant to ¶ 36 of the Membership Agreement, and A.R.S. §§ 12-341
2 and 12-341.01, Best Western is entitled to recover the attorneys' fees and costs incurred in
3 pursuing this action.
4

5 **COUNT III – BREACH OF CONTRACT; POST TERMINATION USE OF**
6 **TRADEMARKS**

7 56. Best Western incorporates by reference the allegations contained in
8 paragraphs 1 through 55 as though fully set forth herein.

9 57. Pursuant to the express terms of the Membership Agreement,
10 Defendants were obligated to remove from public view, and to cease all use of, the Best
11 Western Symbols in connection with the Hotel within fifteen (15) days after termination.
12 This prohibition includes making any representation, whether direct or indirect, indicating
13 that the Hotel property is affiliated with Best Western.
14

15 58. Items at Defendants' Hotel continued to display the name "Best
16 Western" and utilize the Best Western Symbols after the membership terminated, which
17 falsely holds the Hotel out as a Best Western member property, in violation of the License,
18 Membership Agreement, and Regulatory Documents.
19

20 59. Defendants failed to timely remove the curvilinear sign cabinet in
21 violation of the License, Membership Agreement, and Regulatory Documents.
22

23 60. Internet advertisements for the Hotel after the membership terminated
24 refer to the Hotel as the "Best Western Minden Inn" and contain photographs of the Hotel
25 with signs bearing the Best Western Symbols.
26

1 61. A billboard falsely advertised the Hotel as a Best Western member
2 property after the membership terminated, in violation of the License, Membership
3 Agreement, and Regulatory Documents.
4

5 62. Paragraph 24 of the Membership Agreement provides for liquidated
6 damages where, as here, a former member continues to use the Best Western Symbols in
7 connection with the hotel properties for more than fifteen (15) days following the
8 termination of their Best Western membership and the Best Western License. The amount
9 of liquidated damages is equal to fifteen percent (15%) of the mean of the hotel property's
10 room rates per day, multiplied by the total number of rooms for every day that a former
11 member continues to use the Best Western Symbols beyond the fifteen-day period.
12

13 63. Beginning March 15, 2012, Defendants owe \$892.79 per day for each
14 day they are unlawfully using the Best Western Symbols at the Hotel.
15

16 64. The liquidated damages calculations are based on the hotel property's
17 information regarding daily rates and total number of rooms. A copy of the Marketing
18 Statistics Report showing the Average Daily Rates (ADR) for the hotel property and the
19 Best Western Account Information Computer Screen, showing the number of units for the
20 hotel, are attached as Exhibit 10.
21

22 65. Pursuant to ¶ 36 of the Membership Agreement, and A.R.S. § 12-
23 341.01, Best Western is entitled to recover all attorneys' fees and costs incurred in this
24 action.
25
26

1 77. Upon information and belief, Defendants have undertaken the acts
2 complained of herein willfully and with the intent to cause confusion, mistake, and
3 deception on the part of the public.
4

5 78. If Defendants are using the Best Western Symbols unlawfully, unless
6 restrained by this Court, they will continue to commit the foregoing acts of unfair
7 competition.
8

9 79. Defendants' acts complained of have damaged Best Western
10 irreparably. Monetary damages will not afford full and adequate relief for all of Best
11 Western's injuries resulting from Defendants' conduct. Such injuries include harm to Best
12 Western's goodwill and reputation in the marketplace that money cannot sufficiently
13 compensate.
14

15 80. Best Western is, therefore, requesting and entitled to a preliminary and
16 permanent injunction restraining and enjoining Defendants and their respective officers,
17 members, agents, servants, employees, and any other persons or entities acting on behalf of
18 or in concert with Defendants, from using the Best Western Symbols or any colorable
19 imitation thereof, in connection with the promotion, advertisement, and sale of goods and
20 services without Best Western's authorization, pursuant to 15 U.S.C. § 1116.
21

22 81. Defendants' acts of unfair competition are willful and entitle Best
23 Western to recover damages, attorneys' fees, and costs pursuant to 15 U.S.C. § 1117.
24

25 ///

26 ///

1 **COUNT VI – FEDERAL TRADEMARK DILUTION – (15 U.S.C. § 1125(c))**

2 82. Best Western incorporates by reference the allegations contained in
3 paragraphs 1 through 81 above as though fully set forth herein.
4

5 83. Best Western has advertised and publicized the Best Western Symbols
6 extensively for decades throughout the United States, including the State of Arizona. As a
7 result of their inherent distinctiveness and extraordinarily widespread use, the Best
8 Western Symbols have acquired a high degree of recognition and fame for hotel services.
9

10 84. Defendants' unauthorized, post-termination use of the words "Best
11 Western" on items throughout the property, including Best Western Symbols, and the
12 curvilinear sign cabinet shape, are used for commerce and began long after Best Western's
13 Symbols had already become famous throughout the United States, including the State of
14 Arizona.
15

16 85. Defendants' unauthorized, post-termination use of "Best Western," the
17 Best Western Symbols, and the curvilinear sign cabinet shape, are the same as or a
18 variation of the Best Western Symbols and such use is likely to cause dilution of the
19 distinctive quality of the Best Western Symbols.
20

21 86. Myriad internet hotel advertising sites continue to falsely refer to the
22 Hotel as a Best Western member and/or photographs of the Hotel property reveal Best
23 Western Symbols on signage and other items at the Hotel.
24
25
26

1 87. Upon information and belief, Defendants have committed the acts
2 complained of herein willfully and with the intent to trade on Best Western's reputation
3 and/or to cause dilution of Best Western's famous Symbols.
4

5 88. Defendants' acts complained of have damaged Best Western
6 irreparably. Monetary damages will not afford full and adequate relief for all of Best
7 Western's injuries resulting from Defendants' conduct. Such injuries include harm to Best
8 Western's goodwill and reputation in the marketplace that money cannot sufficiently
9 compensate. Best Western is, therefore, requesting and entitled to a preliminary and
10 permanent injunction restraining and enjoining Defendants and their respective officers,
11 members, agents, servants, employees, and any other persons or entities acting on behalf of
12 or in concert with Defendants, from using the Best Western Symbols or any colorable
13 imitation thereof, in connection with the promotion, advertisement, and sale of goods and
14 services without Best Western's authorization, pursuant to 15 U.S.C. § 1116.
15

16 89. Defendants' acts of unfair competition are willful and entitle Best
17 Western to recover damages, attorneys' fees, and costs pursuant to 15 U.S.C. § 1117.
18

19
20 **COUNT VII – UNFAIR COMPETITION – ARIZONA LAW**

21 90. Best Western incorporates by reference the allegations contained in
22 paragraphs 1 through 89 above as though fully set forth herein.
23

24 91. Defendants' acts complained of herein constitute unfair competition
25 under the laws of the State of Arizona.
26

1 92. Defendants have failed to cease and desist from the use of the
2 federally registered Best Western Symbols in connection with advertisements for the
3 Hotel, including the billboard and internet advertisements, and using the Symbols on items
4 at the Hotel after the membership terminated.
5

6 93. Defendants' continued use of the Symbols on the false and misleading
7 websites is likely to divert customers who call the Hotel looking for a Best Western
8 member property to book a reservation at the Hotel instead of actual Best Western member
9 properties.
10

11 94. Defendants have been unjustly enriched and have damaged Best
12 Western's business, reputation, and goodwill.
13

14 95. Upon information and belief, Defendants' acts complained of herein
15 were intentional, wanton, willful, guided by an evil hand and mind, and committed in bad
16 faith and with the intent to confuse and deceive the public.
17

18 96. Defendants' acts complained of herein have caused Best Western
19 irreparable harm for which there is no adequate remedy at law.
20

21 **COUNT VIII – TRADEMARK DILUTION UNDER ARIZONA LAW -**
22 **(A.R.S. § 44-1448.01)**

23 97. Best Western incorporates by reference the allegations contained in
24 paragraphs 1 through 96 above as though fully set forth herein.
25

26 98. The Best Western Symbols are famous within the State of Arizona,
and became famous in Arizona long before Defendants began using the marks.

1 99. Defendants' acts complained of herein constitute commercial use of a
2 mark or trade name that is likely to cause dilution of the distinctive quality of the famous
3 Best Western Symbols.
4

5 100. Defendants have undertaken these acts willfully and with the intent to
6 trade on Best Western's reputation or to cause dilution of the Best Western Symbols.
7

8 101. Defendants' acts complained of herein caused, or are likely to cause,
9 dilution to the famous Best Western Symbols in violation of A.R.S. § 44-1448.01.
10

11 102. Defendants' acts complained of herein have caused irreparable harm
12 and injury to Best Western's famous Best Western Symbols, business reputation, and
13 goodwill for which there is no adequate remedy at law.

14 **COUNT IX – COMMON LAW TRADEMARK INFRINGEMENT**

15 103. Best Western incorporates by reference the allegations contained in
16 paragraphs 1 through 102 above as though fully set forth herein.
17

18 104. Best Western has common law rights in the Best Western Symbols
19 through the use of the marks in commerce, such rights existing long before any use of the
20 marks by Defendants.

21 105. Defendants' acts complained of herein constitute common law
22 infringement of the Best Western Symbols.
23

24 106. Upon information and belief, Defendants have undertaken these acts
25 willfully and with the intent to trade on Best Western's reputation and to cause confusion,
26 mistake, and deception on the public.

1 entitled to pre- and post-judgment interest on those sums at the highest rate allowed by law
2 until paid in full.

3 113. Pursuant to the Membership Agreement, and A.R.S. §§ 12-341 and
4 12-341.01, Best Western is entitled to recover the attorneys' fees and costs incurred in
5 pursuing this action.
6

7 **COUNT XI – UNJUST ENRICHMENT**

8 114. Best Western incorporates by reference the allegations contained in
9 paragraphs 1 through 113 above as though fully set forth herein.
10

11 115. Best Western provided Defendants with goods, services, and supplies
12 while expecting to be compensated in return.

13 116. Defendants knew of Best Western's expectation, and accepted and
14 benefited from the goods, services, and supplies that Best Western provided to them and to
15 the Hotel.
16

17 117. It is inequitable and unconscionable for Defendants to have enjoyed
18 the benefit of Best Western's actions without compensating Best Western, and Defendants
19 have been, and continue to be, unjustly enriched to Best Western's detriment.
20

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Best Western International, Inc. seeks judgment against
23 Defendants, jointly and severally, as follows:
24

25 ///

26 ///

1 A. With respect to Counts I, II and X:

2 The total of unpaid fees, which as of August 1, 2012, totals no less than
3 \$12,351.24, including interest at the rate of one and one-half percent (1.5%) per month
4 until paid in full.
5

6 B. With respect to Count III:

7 1. Liquidated damages for breach of the Best Western Agreement in an
8 amount equal to fifteen percent (15%) of the mean of the Hotel's room rates per day
9 multiplied by the total number of rooms beginning March 15, 2012 until Defendants cease
10 and desist from the unlawful and unauthorized use of the Best Western Symbols.
11

12 2. Beginning March 15, 2012, Defendants owe \$892.79 per day for each
13 day the Best Western Symbols are unlawfully used.
14

15 C. With respect to Counts IV, V, VI and VII:

16 An award of treble damages against Defendants pursuant to 15 U.S.C. §
17 1117(b) or, alternatively, an award of liquidated damages to Best Western against
18 Defendants calculated in the manner provided for in ¶ 24 of the Membership Agreement,
19 whichever is greater.
20

21 D. With respect to all Counts:

22 1. Injunctive relief enjoining Defendants and their respective officers,
23 members, agents, servants, and employees, and any other persons and entities acting on
24 behalf of or in concert with Defendants, to immediately and permanently remove all Best
25 Western Symbols as used on the premises of, or in reference to, the Hotel, including
26

