

McCARTER & ENGLISH, LLP

Eduardo Glas
Gary H. Fechter
Irene M. Hurtado
245 Park Avenue
New York, New York 10167
(212) 609-6800

Four Gateway Center
100 Mulberry Street
Newark, New Jersey 07102
(973) 622-4444

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY**

<p>In re:</p> <p>REVEL AC INC., et al.</p> <p style="text-align: center;">Debtors.</p>	<p>Chapter 11</p> <p>Case No. 13-16253-JHW Jointly Administered</p>
<p>RAVEL HOTEL LLC,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>REVEL ENTERTAINMENT GROUP, LLC and REVEL GROUP, LLC,</p> <p style="text-align: center;">Defendants.</p>	<p>Adversary Proceeding No.</p>

ADVERSARY COMPLAINT

Plaintiff Ravel Hotel LLC. ("Ravel" or "Plaintiff"), with offices at 8-08 Queens Plaza South, Long Island City, New York 11101, by way of Adversary Complaint against Defendant/ Debtor Revel Entertainment Group, LLC ("REG" or the "Debtor"), with offices at 500 Boardwalk, Atlantic City, New Jersey 08401, and Defendant Revel Group, LLC ("Revel Group"), with offices at 500 Boardwalk, Atlantic City, New Jersey 08401, hereby alleges as follows:

NATURE OF THE ACTION

1. This action seeks injunctive and monetary relief based on Defendants' infringement of Plaintiff's trademark in violation of the United States Trademark Act (the "Lanham Act"), 15 U.S.C. § 1051, *et seq.*

JURISDICTION AND VENUE

2. This Court has jurisdiction over this Adversary Proceeding pursuant to 28 U.S.C. §§ 1334, 151 and 157, and 11 U.S.C. § 541 and Bankruptcy Rule 7001(1), (2), (7) and (9).

3. This is a proceeding related to the Debtor's bankruptcy case under 28 U.S.C. § 157(c). Plaintiff reserves all its rights (and nothing herein should be construed as a waiver of Plaintiff's rights) to a jury trial and to seek the withdrawal of the reference of this adversary proceeding to the Bankruptcy Court pursuant to 28 § 157(d). Plaintiff does not consent to a trial by jury before this Court. Plaintiff does not consent to entry of final orders or judgments by the Bankruptcy Court.

4. Venue is properly located in the United States Bankruptcy Court for the District of New Jersey pursuant to 28 U.S.C. § 1409.

PARTIES

5. Plaintiff Ravel Hotel LLC is a New York limited liability company, with its principal place of business located at 8-08 Queens Plaza South, Long Island City, New York 11101.

6. Defendant Revel Entertainment Group, LLC is one of the debtors in the above captioned chapter 11 cases and a New Jersey limited liability company, with its principal place of business at 500 Boardwalk, Atlantic City, New Jersey 08401.

7. Defendant Revel Group, LLC is a Delaware limited liability company, with its principal place of business at 500 Boardwalk, Atlantic City, New Jersey 08401. According to

the documents filed by the Debtor in conjunction with its bankruptcy petition, Revel Group, LLC is the 97% owner of the Debtor's stock.

8. Defendants REG and Revel Group are referred to collectively herein as "Defendants."

GENERAL ALLEGATIONS

9. Plaintiff owns U.S. Registration No. 3,727,980 for the trademark RAVEL (the "RAVEL Mark") in connection with "hotel services," in Class 43. A copy of the Certificate of Registration for the RAVEL Mark is attached hereto as **Exhibit A**.

10. Since at least as early as 2008, Plaintiff has promoted, offered and sold hotel services in connection with the RAVEL Mark throughout the United States in connection with a high-end, boutique hotel located in Queens, New York (the "RAVEL Services").

11. The RAVEL Services offered under the RAVEL Mark are advertised and promoted on Plaintiff's website, www.ravelhotel.com (the "RAVEL Website"). The RAVEL Website prominently displays the RAVEL Mark in connection with the RAVEL Services. (See attached **Exhibit B**, which includes excerpts from the RAVEL Website evidencing use of the RAVEL Mark in connection with the RAVEL Services).

12. In addition, the RAVEL Services offered in connection with the RAVEL Mark are promoted and offered through various third party travel websites, including www.expedia.com, www.hotels.com, and www.orbitz.com (see attached **Exhibit C**).

13. As a result of many years of developing and marketing of the RAVEL Services by Plaintiff, the public has come to recognize the RAVEL Mark as identifying high-end, boutique hotel services that emanate from Plaintiff. The RAVEL Mark is distinctive and/or has acquired secondary meaning among purchasers designating origin, relationship, sponsorship and/or association with Plaintiff. The RAVEL Mark acquired this status long prior to the onset of

Defendants' wrongful acts.

14. Upon information and belief, Defendants offer and sell hotel and casino services in connection with a hotel located in Atlantic City, New Jersey.

15. Notwithstanding the long prior use of the RAVEL Mark by Plaintiff, Plaintiff recently discovered that Defendants are promoting and offering for sale Defendants' hotel and casino services under the trademark REVEL. Defendant REG recently obtained U.S. Registration Nos. 4,196,051 and 4,184,439, both for the trademark REVEL (the "Infringing Mark") in connection with "casino services, namely gambling and betting services," in Class 41, and "resort hotel services, restaurant services, bar services, cocktail lounge services, providing convention facilities, travel agency services, namely making reservations and booking for temporary lodging," in Class 43, (the "Registrations") among other things ("Defendants' Services"). True and Correct copies of the Certificates of Registration for the Infringing Marks are attached hereto as **Exhibit D**.

16. Upon information and belief, REG assigned all of its right, title and interest in and to the Registrations and the Infringing Marks to Revel Group by way of Trademark Assignment, incorrectly dated February 17, 2011 and actually executed on February 17, 2013¹, (the "Assignment"). The Assignment was recorded with the PTO on or about March 7, 2013. A true and correct copy of the Assignment is attached hereto as **Exhibit E**.

17. Defendants' Services are advertised and promoted on Defendants' website, www.revelresorts.com. See attached **Exhibit F**, including excerpts from Defendants' website.

18. In addition, the Defendants' Services offered in connection with the Infringing Marks are promoted and offered through some of the same third party travel websites, including

www.expedia.com, www.hotels.com, and www.orbitz.com, through the Ravel Services are offered (see attached **Exhibit G**).

19. On August 22, 2012, Plaintiff filed Petitions to Cancel the Registrations for the Infringing Marks with the United States Patent and Trademark Office Trademark Trial and Appeal Board (the “TTAB”), where were assigned Proceeding No. 92056068 and Proceeding No. 92056072.

20. On February 6, 2013, the TTAB entered an order consolidating Cancellation Proceeding Nos. 92056068 and 92056072, with Proceeding No. 92056068 designated as the parent proceeding (the “Cancellation Proceedings”).

21. The Cancellation Proceedings seek cancellation of the Registrations for the Infringing Mark on the grounds that the Infringing Marks are likely to cause confusion among consumers as to the source and/or sponsorship of Defendants’ Services..

22. Upon information and belief, Defendants knew or should have known of the RAVEL Mark at the time of its adoption of the Infringing Marks.

23. The Infringing Marks are confusingly similar to the RAVEL Mark and cover services that are identical to the RAVEL Services.

24. In addition, Defendants’ Services appear to be advertised, promoted and sold in some of the same channels of trade and to the same customers as the RAVEL Services, including but not limited to advertising and promotion on the Internet through the same travel websites.

25. Use of the Infringing Marks in connection with Defendants’ Services by Defendants is likely to cause consumer confusion and give consumers the false impression that Defendants and/or Defendants’ Services are otherwise affiliated with or sponsored by Plaintiff,

¹ Upon information and belief the Assignment was executed on February 17, 2012, not February 17, 2011, because Schedule B to the Assignment includes the dates of registration and registration numbers for the Infringing Marks,

and that Defendants' Services emanate from, are manufactured and sponsored by Plaintiff, when Defendants' Services are in fact offered by a competitor of Plaintiff.

26. Use of the Infringing Marks by Defendants constitutes infringement of the RAVEL Mark.

27. As a result of wrongful conduct by Defendants, Plaintiff has suffered irreparable damage to its goodwill and business reputation, and will continue to suffer such damage unless the conduct by Defendant is restrained.

COUNT I

TRADEMARK INFRINGEMENT IN VIOLATION OF 15 U.S.C. §1114

28. Plaintiff repeats and realleges the allegations of paragraphs 1 through 27 of its Complaint as if fully set forth herein.

29. Use of the Infringing Marks by Defendants in connection with the promotion, offer for sale and sale of Defendants' Services is not authorized by Plaintiff.

30. These acts by Defendants constitute trademark infringement under 15 U.S.C. §1114. The acts by Defendants cause a likelihood of confusion, deception and mistake by buyers, and the consuming public. The acts by Defendants create a likelihood that a false and unfair association will be made between Defendants, the Defendants' Services, and Plaintiff, so that the purchasing public is likely to believe that the Defendants' Services are authentic RAVEL Services, that Defendants are authorized by Plaintiff to offer for sale and sell the RAVEL Services, and/or that Defendants and the Defendants' Services are otherwise affiliated with or sponsored by Plaintiff.

31. The acts by Defendants have been committed intentionally, maliciously,

both of which obtained registration after February 17, 2011.

fraudulently, and willfully for the purposes of deceiving buyers into purchasing services from Defendants based on the false belief that those services are genuine RAVEL Services, that Defendants are authorized by Plaintiff to sell the RAVEL Services, and/or that Defendants and the Defendants' Services are otherwise affiliated with or sponsored by Plaintiff, and with the specific intent to appropriate to Defendants and to employ for its own benefit the valuable goodwill and business reputation represented by the RAVEL Mark.

32. The acts by Defendants have caused and, if allowed to continue, will continue to cause Plaintiff to suffer substantial irreparable damage and injury. Plaintiff has no adequate remedy at law.

33. As a result of the foregoing, Plaintiff has lost profits and Defendants have been unjustly enriched. In addition, the actions by Defendants have been extraordinary, entitling Plaintiff to attorneys' fees and cost of suit, and to such other and further relief as the Court shall deem appropriate in the circumstances.

COUNT II

TRADEMARK INFRINGEMENT, UNFAIR COMPETITION AND FALSE DESIGNATION OF ORIGIN IN VIOLATION OF 15 U.S.C. §1125(a)

34. Plaintiff repeats and realleges the allegations of paragraphs 1 through 33 of its Complaint as if fully set forth herein.

35. Defendants, with direct knowledge of Plaintiff's rights in and to the RAVEL Mark, are engaged in the promotion, offer for sale and sale of the Defendants' Services bearing the Infringing Marks.

36. The use by Defendants of a trademark that is confusingly similar to the RAVEL Mark on or in connection with the promotion, offering for sale and sale of competing services is

not authorized by Plaintiff.

37. The acts of Defendants in promoting, offering for sale and selling of the Defendants' Services in connection with the Infringing Marks constitute direct and contributory trademark infringement, false designation of origin, unfair competition and false advertising in violation of Lanham Act § 43(a), 15 U.S.C. § 1125(a).

38. The acts of Defendants cause a likelihood of confusion, deception and mistake by buyers, the consuming public and the trade. The acts of Defendants create a likelihood that a false and unfair association will be made between Defendants, the Infringing Marks, and the Defendants' Services, and the RAVEL Services, so that consumers are likely to believe that Defendants' Services are offered or sponsored by Plaintiff.

39. The acts of Defendants have been committed intentionally, maliciously, fraudulently, and willfully for the purposes of deceiving consumers into purchasing the Defendants' Services based on the false belief that such services are authentic RAVEL Services, and with the specific intent to appropriate to Defendants and to employ for its own benefit the valuable goodwill and business reputation represented by the RAVEL Mark.

40. The acts of Defendants have caused and, if allowed to continue, will continue to cause Plaintiff to suffer substantial irreparable damage and injury. Plaintiff has no adequate remedy at law.

41. As a result of the foregoing Plaintiff has lost profits and Defendants have been unjustly enriched. In addition, Defendants' actions have been extraordinary, entitling Plaintiff to attorneys' fees and cost of suit, and to such other and further relief as the Court shall deem appropriate in the circumstances.

COUNT III

**CANCELLATION OF REGISTRATIONS PURSUANT TO
15 U.S.C. §§ 1119 AND 1052(d)**

42. Plaintiff repeats and realleges the allegations of paragraphs 1 through 41 of its Complaint as if fully set forth herein.

43. The Infringing Marks are confusingly similar to the RAVEL Mark, which was in use and the subject of a federal registration prior to Defendants' adoption, first use and registration of the Infringing Marks, and when the Infringing Marks are used in connection with Defendants' Services, they are likely to cause confusion, or to cause mistake, or to deceive consumers to mistakenly believe that Defendants' Services are those of Plaintiff and/or that Defendants and Defendants' Services are authorized or sponsored by Plaintiff.

44. Plaintiff is being and will continue to be damaged by Defendants' continued registration of the Infringing Marks.

45. In light of the foregoing, the Court should declare Defendants' Registrations for the Infringing Marks invalid and cancelled pursuant to 15 U.S.C. §§1119 and 1052(d).

COUNT IV

STATE AND COMMON LAW CLAIMS

46. Plaintiff repeats and realleges the allegations of paragraphs 1 through 45 of its Complaint as if fully set forth herein.

47. These claims arise under the common law and statutes of the various states, including the State of New Jersey, relating to unfair competition and trademark infringement.

48. As a result of the wrongful acts of Defendants, the purchasing public is likely to falsely believe that Plaintiff has authorized the use of the Infringing Marks in connection with the Defendants' Services, and to buy such services in that erroneous belief.

49. Defendants knowingly and intentionally appropriated, used and continue to use the Infringing Marks, which are confusingly similar to the RAVEL Mark, with the intent of causing confusion, mistake, and deception as to the source of their services; and through these acts Defendants knowingly made false representations as to the source, sponsorship, approval, affiliation, connection, and association of the Defendants' Services with Plaintiff. As a result of their actions, Defendants have misappropriated and will misappropriate valuable property rights of Plaintiff. Defendants are trading on, and will continue to trade on, the good will symbolized by the distinctive and well-known RAVEL Mark, and are thereby likely to confuse and deceive purchasers.

50. By virtue of its aforementioned acts, Defendants have engaged and will continue to engage in unfair competition with respect to Plaintiff in violation of the statutory and common laws of unfair competition of the various states, including the State of New Jersey under N.J.S.A. § 56:4-1 and other laws.

51. The infringing acts of Defendants are continuing and upon information and belief will continue into the future. Defendants' acts have caused and, if allowed to continue, will continue to cause Plaintiff to suffer substantial irreparable damage and injury. Plaintiff has no adequate remedy at law.

52. As a result of the foregoing, Plaintiff has lost profits and Defendants has been unjustly enriched. In addition, the actions of Defendants have been extraordinary, entitling Plaintiff to attorneys' fees and cost of suit, and to such other and further relief as the Court shall deem appropriate in the circumstances.

53. Plaintiff requests restitution of the profits of Defendants in an amount to be shown at any trial of this action.

54. Plaintiff is further entitled to compensatory damages based on damage to its goodwill and business reputation that have been caused by unfair and competitive acts of Defendants.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully demands judgment:

(1) That Defendants and their agents, servants, employees, attorneys, successors and assignees, and all persons in active concert or participation with any of them, be permanently enjoined and restrained from:

(a) Using in any manner the Infringing Marks, or any other designation or mark confusingly similar to the RAVEL Mark, including, but not limited to, selling, offering for sale, displaying, promoting or advertising services in connection with the Infringing Marks, or any other designation or mark confusingly similar to the RAVEL Mark;

(b) Passing off, inducing, or enabling others to sell or pass off any services that do not emanate from Plaintiff or that are not distributed under the control and supervision of Plaintiff and approved by Plaintiff for sale under the RAVEL Mark, as services distributed by or with the approval of Plaintiff;

(c) Falsely advertising any services as RAVEL brand services that do not emanate from Plaintiff or that are not distributed under the control and supervision of Plaintiff and approved by Plaintiff for sale under the RAVEL Mark;

(d) Committing any act calculated to cause purchasers to falsely believe that Defendants' Services are those sold under the control and supervision, were sponsored, approved or connected with or guaranteed, or produced under the control and supervision of Plaintiff;

(e) Shipping, importing, delivering, distributing, returning, or otherwise disposing of in any manner advertising materials, products or inventory bearing the Infringing Marks;

(f) Further infringing the RAVEL Mark and damaging Plaintiff's goodwill and business reputation;

(g) Otherwise competing unfairly with Plaintiff in any manner; and

(h) Continuing to perform in any manner whatsoever any act deemed contrary to law by this Court.

(2) That Defendants be required immediately to deliver to Plaintiff any and all circulars, signs, printed materials, receptacles, advertising matter, promotional and other material in their possession or control bearing the Infringing Marks, or any marks confusingly similar to the RAVEL Mark, used in connection with the advertising, offering for sale, or sale of services not made by or under the authorization and control of Plaintiff, for destruction.

(3) That Defendants, within 30 days after service of judgment, with notice of entry thereof upon them, be required to file with the Court and serve upon Plaintiff a written report under oath setting forth in detail the manner in which each has complied with paragraphs 1 through 2, above.

(4) That Defendants be required to pay to Plaintiff, in accordance with 15 U.S.C. § 1117(b), such damages as Plaintiff has suffered in consequence of Defendants' infringement of the RAVEL Mark and from the above-described acts of misrepresentation, unfair competition, and unfair trade practices, including the following:

(a) Three times all gains and profits derived by Defendants from the above described acts of misrepresentation, trademark infringement, unfair competition, and unfair trade practices, or, in the alternative, three times Plaintiff's lost profits, whichever is greater; and

(b) All costs and attorneys' fees incurred in this action.

(5) That this Court enter an order directing the United States Patent and Trademark Office to cancel U.S. Registration Nos. 4,196,051 and 4,184,439 for the Infringing Marks.

(6) That Plaintiff have such other and further relief as the Court deems just and proper, including, but not limited to relief ordered under 15 U.S.C. § 1117.

JURY DEMAND

Plaintiff hereby demands a jury trial on all issues so triable.

Dated: April 3, 2013

McCARTER & ENGLISH, LLP

s/Eduardo Glas

Eduardo Glas

Gary H. Fechter

Irene M. Hurtado

245 Park Avenue

New York, New York 10167

(212) 609-6800

Attorneys for Plaintiff Ravel Hotel LLC