

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

PARK HOSPITALITY LLC, a Delaware	)	CASE NO. _____
limited liability company,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	COMPLAINT
	)	
AMERICAN TRADERS, INC., a	)	
California corporation,	)	
	)	
Defendant.	)	

Plaintiff Park Hospitality LLC, as and for its Complaint against Defendant American Traders, Inc., states and alleges as follows:

PARTIES

1. Plaintiff Park Hospitality LLC (“Park”) is a limited liability company organized under the laws of the state of Delaware with its principal place of business located at 701 Carlson Parkway, Minnetonka, Minnesota 55305.

2. The members of Park are Park Worldwide LLC and Park Global Holdings, Inc., both of which are Minnesota companies that have their principal place of business located at 701 Carlson Parkway, Minnetonka, Minnesota 55305. Both Park Worldwide LLC and Park Global Holdings, Inc. are wholly owned by Carlson Hotels, Inc., which is a Minnesota corporation with its principal place of business located at 701 Carlson Parkway, Minnetonka, Minnesota 55305.

3. Defendant American Traders, Inc. (“Defendant”) is a California corporation with its principal place of business located at 4004 Calais Court, Modesto, California 95356.

JURISDICTION AND VENUE

4. This action involves the breach of a License Agreement and a Termination Agreement between the parties.

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 because the parties are citizens of different states and the amount in controversy exceeds \$75,000.

6. Venue is proper in this District because Defendant has voluntarily consented to venue in Hennepin County, Minnesota pursuant to Article 25.4 of the applicable License Agreement and paragraph 17 of the applicable Termination Agreement. Venue is also proper in this District under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims herein occurred in this District.

7. This Court has personal jurisdiction over Defendant because it voluntarily consented to personal jurisdiction in the state of Minnesota pursuant to Article 25.4 of the applicable License Agreement and paragraph 17 of the applicable Termination Agreement. This Court also has personal jurisdiction over Defendant because it has purposefully availed itself of the privilege of doing business in Minnesota, has intentionally done business in Minnesota, enjoying the privileges and benefits of Minnesota’s laws and regulations, and has purposefully directed its actions toward Minnesota.

CONDUCT GIVING RISE TO VIOLATIONS OF LAW

A. The Park Franchise System

8. Park is the franchisor of the Park Inn By Radisson® system hotels (“System Hotels”) and is a leader in the mid-scale lodging industry with a food and beverage offering. System Hotels are defined by their commitment to consistently high quality accommodations.

9. System Hotels are characterized by Park’s unique system (the “Business System”), which includes distinctive exterior and interior design, décor, and color scheme; uniform standards, specifications, and procedures for construction, renovation and operations; confidential and proprietary system information; quality and uniformity of products and services offered; procedures for inventory and management control; training and assistance; and advertising and promotional programs.

10. In addition to guestrooms and a lobby area, Park’s System Hotels include various amenities, such as a swimming pool, a restaurant, a cocktail lounge (where legally permitted), a business center, room service, a banquet area, and meeting rooms.

11. Park’s System Hotels operate under the Park Inn® trademark, the Park Inn by Radisson® trademark, the Park Plaza® trademark, and other trademarks, service marks, and trade dress (referred to collectively as the “Park Marks” or “Marks”) pursuant to license agreements with Park.

12. Park franchisees enjoy a license that allows them to use the Park Marks and Business System in connection with the operation of System Hotels. Park has been offering licenses to franchisees to operate its System Hotels since August 2000.

13. As a result of the efforts of Park, its parents, and its affiliates, the Park Marks have become associated in the minds of the consuming public with quality hotel services emanating from Park.

B. The License Agreement Between Park and Defendant

14. Park and Defendant entered into a License Agreement with an effective date of June 11, 2013, which was amended effective October 15, 2013, (the “License Agreement”) granting Defendant the non-exclusive license to renovate and operate a Park Inn by Radisson® guest lodging facility located at 1720 Sisk Road, Modesto, California 95350 (the “Hotel”), using the Park® Marks and Business System, for a period of 15 years. A true and correct copy of the License Agreement, with the amendment, is attached as Exhibit A.

15. Article 5 of the License Agreement establishes certain recurring monthly fees that Defendant was required to pay to Park over the term of the license. Under Article 5.2 of License Agreement, as amended, Defendant agreed to pay Park a Royalty Fee equal to: (a) 2.5% of daily Gross Room Revenue from the opening date of the Hotel and continuing through November 14, 2013; (b) 3.0% of daily Gross Room Revenue beginning on November 15, 2013, and continuing through year 2 of the License Agreement; and (c) 3.5% of daily Gross Room Revenue beginning on the first day of year 3 of the License Agreement and continuing through the end of the term.

16. Pursuant to Article 5.3 of the License Agreement, as amended, Defendant agreed to pay Park a Marketing Fee equal to: (a) 1% of daily Gross Room Revenue from the opening date of the Hotel and continuing through November 14, 2013; (b) 1.5% of

daily Gross Room Revenue beginning on November 15, 2013, and continuing through year 2 of the License Agreement; and (c) 2.0% of daily Gross Room Revenue beginning on the first day of year 3 of the License Agreement and continuing through the end of the term.

17. Pursuant to Article 5.4 of the License Agreement, Defendant agreed to pay Park a Reservation Fee equal to 1% of daily Gross Room Revenue. In addition, Defendant agreed to pay Park \$3.75 for each reservation delivered through the Third Party Systems.

18. Pursuant to Article 5.8 of the License Agreement, Defendant agreed to pay to Park interest on any past due amounts at the lesser of a rate of 1.5% per month or the maximum rate allowed by law. In addition, Defendant agreed to pay any late payment fees assessed by Park of up to \$100 for each month that an amount due under the License Agreement remains delinquent.

19. Pursuant to Article 17.2(a) of the License Agreement, Defendant agreed that the failure to pay any past due fees or other amounts owed to Park constitutes an “event of material default” that entitles Park to terminate the License Agreement upon notice to Defendant, subject to a right to a cure. The cure period for such a default is ten days after Defendant’s receipt of the notice.

20. Pursuant to Article 17.4 of the License Agreement, Defendant acknowledged that if the License Agreement was terminated because of Defendant’s default, the actual damages that Park would suffer for the loss of prospective fees and other amounts payable to Park under Article 5 would be difficult if not impossible to

ascertain. Article 17.4 goes on to state that if the License Agreement is terminated because of Defendant's default:

Licensee within 10 days of such termination will pay to Park as liquidated damages, and not as a penalty, a reasonable estimate of the probable damages that Park would suffer for the loss of prospective fees and other amounts payable under Article 5, calculated as follows: (i) two times the Royalty Fee payable under Section 5.2, for the 12 months of the Hotel's Operation as a System Hotel immediately preceding the date of the termination of this Agreement, plus the Marketing Fees payable to Park under Section 5.3, calculated at the rate of two percent (2%) of Gross Room Revenue, for the 12 months of the Hotel's Operation as a System Hotel immediately preceding the date of the termination of this Agreement; Licensee will also pay taxes on such payment in accordance with Section 5.9.

21. Pursuant to Article 19.1 of the License Agreement, Defendant agreed that, upon termination of the Agreement, it would immediately:

(a) Pay all amounts due and owing to Park and its Affiliates, submit any missing Reports to Park or its Affiliates, and deposit with Park an amount reasonably estimated by Park that will be sufficient to cover the amounts that will become due and owing after the termination or expiration date, attributable to the period prior to such date.

* * *

22. Pursuant to Article 25.13 of the License Agreement, Defendant agreed that all reasonable and necessary costs and expenses, including attorneys' fees, incurred in enforcing any provisions of License Agreement will be paid to the prevailing party in such action.

CONDUCT GIVING RISE TO VIOLATIONS OF LAW

A. Defendant's Default of the License Agreement

23. By letter dated August 18, 2014, Park notified Defendant that it was in default of the License Agreement for failing to pay past due fees in the amount of \$80,855.40. Park advised Defendant that its failure to cure the default by September 2, 2014, would allow Park the right to suspend Reservation Services and terminate the License Agreement. A true and correct copy of the August 18, 2014, Notice of Default letter is attached as Exhibit B.

24. By letter dated September 9, 2014, Park agreed to extend the deadline for Defendant to cure the default to October 3, 2014. A true and correct copy of the September 9, 2014, letter is attached as Exhibit C.

25. Defendant failed to cure the default by October 3, 2014.

B. The Termination Agreement

26. By mutual agreement, Park and Defendant entered into a written Termination Agreement with an effective date of December 2, 2014, pursuant to which Defendant's rights under the License Agreement were terminated on February 28, 2015 ("Termination Date"). A true and correct copy of the Termination Agreement is attached as Exhibit D.

27. Under paragraph 4 of the Termination Agreement, Defendant agreed that it would pay Park the estimated amount of \$129,927.01 (the "Termination Payment") as follows: (a) the amount of \$5,000 on or before December 15, 2014; (b) the amount of

\$5,000 on or before January 15, 2015; and (c) the amount of \$119,927.01 on or before February 1, 2015.

28. Pursuant to paragraph 5 of the Termination Agreement, Defendant also agreed to pay Park liquidated damages in the amount of \$91,727.98, as calculated under Article 17.4 of the License Agreement, on or before February 1, 2015.

29. Pursuant to Paragraph 12 of the Termination Agreement, Defendant acknowledged and agreed that if either party instituted any action to enforce any provision of the Termination Agreement or License Agreement, the prevailing party would be entitled to receive all costs and expenses incurred, including reasonable attorneys' fees.

30. Defendant failed to comply with its payment obligations set forth in paragraphs 4 and 5 of the Termination Agreement.

31. By letter dated May 8, 2015, Park notified Defendant that the License Agreement had been terminated effective February 28, 2015, and that Defendant owed past due fees and liquidated damages under the terms of the License Agreement and Termination Agreement. A true and correct copy of the May 8, 2015, letter is attached as Exhibit E.

32. Following the termination of the License Agreement, Park sent Defendant a demand letter dated June 16, 2015, in which Park sought, in part, payment of past due Royalty Fees, Marketing Fees, Reservation Fees and other fees (totaling \$128,399.53) and liquidated damages (totaling \$91,727.98) in accordance with Article 17.4 of the License Agreement and paragraph 5 of the Termination Agreement. Park advised

Defendant that if payment was not received by June 30, 2015, Park would initiate legal action to enforce its rights under the License Agreement and Termination Agreement. A true and correct copy of the June 16, 2015, demand letter is attached as Exhibit F.

33. Despite its obligation to do so, Defendant has failed to pay Park past due fees totaling \$128,399.53 and liquidated damages in the amount of \$91,727.98, for a total amount owed to Park of \$220,127.51.

COUNT I

BREACH OF LICENSE AGREEMENT AND TERMINATION AGREEMENT – FAILURE TO PAY FEES

34. Park incorporates by reference all preceding paragraphs.

35. Defendant had a contractual obligation under the License Agreement and Termination Agreement to pay certain Royalty Fees, Marketing Fees, Reservation Fees, and other fees as set forth in the those Agreements.

36. Park has performed all conditions, covenants and promises required to be performed by it pursuant to the License Agreement and Termination Agreement.

37. Defendant is in breach of the License Agreement and Termination Agreement as a result of its failure to pay all fees due and owing under the License Agreement and the Termination Agreement.

38. As a direct result of Defendant's breach, Park has been damaged in an amount to be proven at trial, but in no event less than \$128,399.53, plus costs, disbursements, interest, and attorneys' fees.

COUNT II

**BREACH OF LICENSE AGREEMENT AND TERMINATION AGREEMENT –
FAILURE TO PAY LIQUIDATED DAMAGES**

39. Park incorporates by reference all preceding paragraphs.

40. Defendant had a contractual obligation under the License Agreement to pay certain Royalty Fees, Marketing Fees, Reservation Fees and other fees as set forth in the License Agreement, for the remaining unexpired term of the License Agreement.

41. Defendant caused the premature termination of the License Agreement by failing to pay all amounts due and owing through the entire term of the Agreement.

42. By virtue of Defendant's premature termination of the License Agreement, Park sustained a loss of future revenue over the remainder of the 15 year term of the License Agreement.

43. Park has been damaged by Defendant's breach of its obligation to operate the Hotel for the remaining term of the License Agreement, in an amount contractually agreed to by the parties, as set forth in the License Agreement and paragraph 5 of the Termination Agreement.

44. As a direct result of the Defendant's breaches, Defendant is liable to Park for liquidated damages in the amount of \$91,727.98, plus costs, disbursements, interest, and attorneys' fees.

COUNT III

**BREACH OF LICENSE AGREEMENT AND TERMINATION AGREEMENT –
ATTORNEYS' FEES**

45. Park incorporates by reference all preceding paragraphs.

46. Pursuant to Article 25.13 of the License Agreement and paragraph 12 of the Termination Agreement, Defendant agreed to compensate Park for any costs and attorneys' fees that Park incurred in enforcing any provision of the License Agreement or Termination Agreement.

47. Park has commenced this action to recover amounts owed by Defendant under the License Agreement and Termination Agreement. Park is entitled to recover its attorneys' fees and costs incurred in connection with this action, in an amount to be proven at trial.

WHEREFORE, Park prays for judgment against Defendant as follows:

A. For an order ratifying and enforcing the termination of the License Agreement;

B. For an award against Defendant for the past amounts due and owing under the License Agreement and Termination Agreement in an amount to be proven at trial, but in no event less than \$128,399.53;

C. For an award against Defendants for liquidated damages arising from Defendant's premature termination of the License Agreement, as specifically set forth in Article 17.4 of the License Agreement and paragraph 5 of the Termination Agreement, in an amount to be proven at trial, but in no event less than \$91,727.98;

D. For an award against Defendant for Park's reasonable and necessary costs and expenses, including attorneys' fees, incurred in enforcing the provisions of the License Agreement and Termination Agreement in an amount to be proven at trial;

E. For an award against Defendant for prejudgment and post judgment interest; and

F. For such other and further relief as the Court deems just and proper.

DATED: February 3, 2016.

GRAY, PLANT, MOOTY, MOOTY
& BENNETT, P.A.

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