

**CAUSE NO. 141-268560-13**

<b>AMERICAN AIRLINES, INC.</b>	§	<b>IN THE DISTRICT COURT</b>
	§	
<b>PLAINTIFF,</b>	§	
	§	
<b>V.</b>	§	
	§	
<b>SEA TO SKI VACATIONS, LLC;</b>	§	<b>TARRANT COUNTY, TEXAS</b>
<b>AMERICAN TRAVEL PLANNERS, LLC;</b>	§	
<b>TRADITIONS TRAVEL GROUP, LLC;</b>	§	
<b>M&amp;H ACQUISITIONS;</b>	§	
<b>CHRISTIAN WUNDER; STEPHEN</b>	§	
<b>WUNDER; PACIFIC PALM</b>	§	
<b>DESTINATIONS, LLC JERALD</b>	§	
<b>JACKSON; TRAVEL MYLES, LLC; JOSH</b>	§	<b>141<sup>st</sup> JUDICIAL DISTRICT</b>
<b>DURHAM; GREAT TOWN</b>	§	
<b>INVESTMENTS GROUP, INC., D/B/A/</b>	§	
<b>FIVE STAR VACATIONS; LUAY TAISIN</b>	§	
<b>ABOSAAD; ALBERT E. TOLIVER;</b>	§	
<b>BRENDAN T. HALLER; PRESTIGE</b>	§	
<b>TRAVEL SYSTEMS, INC.; ANDREW</b>	§	
<b>WUNDER; BETHANY WUNDER; AND</b>	§	
<b>LAURENT HAZOUT, individually and</b>	§	
<b>d/b/a GLOBAL TRAVEL CONSULTANTS<sup>1</sup></b>	§	

**DEFENDANTS.**

**PLAINTIFF’S SECOND AMENDED ORIGINAL PETITION AND APPLICATION FOR INJUNCTIVE RELIEF**

**SUMMARY**

The Defendants are using American Airlines’ (“American”) intellectual property on mass-mailed postcards and letters to intentionally confuse people into believing that American is sponsoring or endorsing give-away promotions for two roundtrip tickets; whereas these promotions are a naked attempt to deceptively lure people into sale presentations for useless

<sup>1</sup> On November 7, 2013 a default judgment was entered against Sea to Ski Vacations, LLC, American Travel Planners, LLC, Traditions Travel Group, LLC, Christian Wunder, and Stephen Wunder (the “default defendants”). American’s claims and judgment against the default defendants have been severed into a new case, and, therefore, they are no longer parties to this case.

travel-club memberships by playing off of American's famous and valuable trademarks. American does not sponsor or endorse these promotions or the Defendants' activities. American is not associated with the Defendants. American did not authorize the Defendants' use of American's trademarks on the postcards or letters. American has now brought suit to stop the Defendants from misappropriating American's famous and valuable trademarks, to stop the Defendants from intentionally confusing the public into thinking that American supports or endorses the Defendants' deceptive practices, to stop the Defendants by its deceptive practices from harming American's good will, and to recover damages for the harm that Defendants have caused by their deceptive practices.

Plaintiff American Airlines, Inc. files this Second Amended Original Petition and Application for Injunctive Relief against Defendants M&H Acquisitions, LLC; Pacific Palm Destinations, LLC; Travel Myles, LLC; Jerald Jackson; Josh Durham; Great Town Investments Group, Inc. d/b/a Five Star Vacations; Luay Taisin Abosaad; Albert E. Toliver; Brendan T. Haller; Prestige Travel Systems, Inc.; Andrew Wunder; Bethany Wunder; and Laurent Hazout, individually and d/b/a Global Travel Consultants.

On January 18, 2013, Andrew and Bethany Wunder filed for bankruptcy in the United States Bankruptcy Court for the District of Colorado. All claims asserted against them in this Second Amended Original Petition are for their acts and omissions that occurred after January 18, 2013. Accordingly, these claims are not stayed or barred in any way by the bankruptcy proceeding.

## **I.** **DISCOVERY LEVEL**

1. American requests that discovery in this case be conducted pursuant to Discovery Control Plan Level 3, as set forth in Rule 190.4 of the Texas Rules of Civil Procedure.

## **II.** **PARTIES**

2. American is a Delaware Corporation, licensed to do business in the State of Texas. American maintains its principal place of business at 4333 Amon Carter Boulevard, Fort Worth, Texas 76155. American is a citizen of Delaware and Texas.

3. M&H Acquisitions, LLC (M&H Acquisitions) is a Utah Limited Liability Company with its principal places of business at 11570 Colony Row, Broomfield, Colorado 80021. M&H Acquisitions may be served through service on its registered agent, Bethany Wunder, at 542 Homestead Street, Broomfield, Colorado 80026, 1860 Lucky John Drive, Park City Utah 84060, or wherever she may be found.

4. Pacific Palm Destinations, LLC ("Pacific Palm") is a Rhode Island Limited Liability Company with its principal place of business at 400 West Cummings Park, Suite 4900, Woburn, Massachusetts 01801. Pacific Palm was served and appeared.

5. Jerald Jackson is an individual domiciled at 317 Cold Mountain Trail, Fort Worth, Texas 76131. Jerald Jackson was served and appeared.

6. Travel Myles LLC ("Travel Myles") is an Ohio and South Carolina Limited Liability Company with its principal place of business in Texas. Travel Myles was served and appeared.

7. Josh Durham is an individual domiciled at 1033 S. Poplar Drive, Surfside, South Carolina 29575. Josh Durham was served and appeared.

8. Great Town Investments Group, Inc. d/b/a/ Five Star Vacations ("Five Star") is a Domestic For-Profit Corporation with its principal place of business at 213 Hockaday Avenue, Garland, Texas 75043. Five Star was served and appeared.

9. Luay Taisin Abusaad, is an individual domiciled at 213 Hockaday Avenue, Garland, Texas 75043. Luay Taisin Abusaad was served and appeared.

10. Albert E. Toliver is an individual domiciled at 1524 Carter Drive, Arlington, Texas 76010-8834. Albert E. Toliver was served but has not yet appeared.

11. Brandan T. Haller is an individual domiciled at 1457 Javelin Way, Lewisville, Texas 75077-7656. Brandan T. Haller was served but has not yet appeared.

12. Prestige Travel Systems, Inc. (“Prestige Travel Systems”) is a Florida Corporation with its principal place of business at 4802 Gunn Highway, Tampa, Florida 33624. Prestige Travel Systems was served but has not yet appeared.

13. Defendant, Andrew Wunder, an individual who is a nonresident of Texas, whose home is located at 542 Homested St., Lafayette, Colorado 80226, may be served with process by serving the Texas Secretary of State at 1019 Brazos Street, Austin, Texas 78701, as Andrew Wunder’s agent for service because Andrew Wunder engages in business in Texas but has not designated or maintained a resident agent for service of process, and engages in business in Texas but does not maintain a regular place of business in Texas or a designated agent for service of process, and this suit arose from Andrew Wunder’s business in Texas. *See* TEX. CIV. PRAC. & REM. CODE §§ 17.044(a)(1), 17.044(b).

14. Defendant, Bethany Wunder, an individual who is a nonresident of Texas, whose home is located at 542 Homested St., Lafayette, Colorado 80226, may be served with process by serving the Texas Secretary of State at 1019 Brazos Street, Austin, Texas 78701, as Bethany Wunder’s agent for service because Bethany Wunder engages in business in Texas but has not designated or maintained a resident agent for service of process, and engages in business in Texas but does not maintain a regular place of business in Texas or a designated agent for

service of process, and this suit arose from Bethany Wunder's business in Texas. *See* TEX. CIV. PRAC. & REM. CODE §§ 17.044(a)(1), 17.044(b).

15. Defendant, Laurent Hazout, individually and d/b/a Global Travel Consultants, an individual who is a nonresident of Texas, whose home is located at 8969 Michael Ryan Ct., Las Vegas, Nevada 89149, may be served with process by serving the Texas Secretary of State at 1019 Brazos Street, Austin, Texas 78701, as Laurent Hazout, individually and d/b/a Global Travel Consultants' agent for service because Laurent Hazout, individually and d/b/a Global Travel Consultants engages in business in Texas but has not designated or maintained a resident agent for service of process, and engages in business in Texas but does not maintain a regular place of business in Texas or a designated agent for service of process, and this suit arose from Laurent Hazout, individually and d/b/a Global Travel Consultants' business in Texas. *See* TEX. CIV. PRAC. & REM. CODE §§ 17.044(a)(1), 17.044(b).

### **III.** **JURISDICTION AND VENUE**

16. The Court has subject matter jurisdiction over this case because the amount in controversy exceeds the Court's minimum jurisdictional requirements. At this time, American seeks monetary relief in excess of \$1,000,000.

17. The Court has personal jurisdiction over Defendants M&H Acquisitions, Pacific Palm, Jerald Jackson, Five Star, Luay Taisin Abusaad, Travel Myles, Josh Durham, Albert E. Toliver, Brendan T. Haller, Prestige Travel Systems, Andrew Wunder, Bethany Wunder, and Laurent Hazout, individually and d/b/a Global Travel Consultants, LLC (collectively, "Defendants") because Defendants do business in Texas. In particular, Defendants conducted and directed their marketing scheme in Texas, mailed infringing postcards and letters to Texas residents, employed and/or directed Texas residents to further Defendants' scheme in Texas; sold

their products in Texas, sought out Texas residents to purchase their products, and otherwise purposefully availed themselves of the privilege of conducting activities in Texas, thus invoking the benefits and protections of its laws. Defendants have established minimum contacts with Texas such that the exercise of jurisdiction comports with traditional notions of fair play and substantial justice. Moreover, Defendants Jerald Jackson, Luay Abusaad, Albert Toliver, and Brendan Haller are domiciled in Texas. Defendants Pacific Palm and Five Star operate their principal place of business in Texas.

18. Defendants Andrew Wunder and Bethany Wunder filed bankruptcy proceedings which are pending in the United States Bankruptcy Court for the District of Colorado, Case No. 13-10669 ABC. The allegations in this Petition, as they relate to Andrew and Bethany Wunder, are solely for actions that occurred (and business conducted) in the State of Texas after the bankruptcy petition was filed. Therefore, the claims against Andrew and Bethany Wunder in this Petition are not covered by the bankruptcy court's automatic stay.

19. Venue is proper in Tarrant County, Texas, because a substantial part of the events or omissions giving rise to American's claims occurred in Tarrant County. TEX. CIV. PRAC. & REM. CODE § 15.002(a)(1). Alternatively, venue is proper in Tarrant County because Defendants Jerald Jackson and Albert Toliver are individuals residing in Tarrant County. TEX. CIV. PRAC. & REM. CODE § 15.002(a)(2).

#### **IV.** **FACTS**

##### **A. American's Trademarks Are Famous and Valuable Symbols of American's Goods, Services, and Associated Goodwill.**

20. Operating for more than seventy-five years, Fort Worth-based American has become one of the world's largest commercial airlines. Together with its affiliates, American

serves 260 cities in over fifty countries, with more than 3,500 daily flights in over 900 aircraft.

In the nearly eight decades that American has been providing air transportation and cargo services under the AMERICAN AIRLINES brand and related marks, it has developed substantial goodwill with its customers, its employees and the general public by establishing itself as a professional company and reputable employer with reliable, high-quality customer service.

21. Throughout its existence, American has acquired extensive rights in its trade name, trademarks, and service marks (collectively, “American’s Marks”). American’s Marks are unique and famous distinctive designations of American’s various products and services. American has invested hundreds of millions of dollars in worldwide advertising and marketing in order to build the fame, reputation, and goodwill of American’s Marks. American’s Marks are assets of incalculable value as symbols of American, its quality goods and services, and its goodwill.

**B. Defendants Are Unlawfully Using American’s Marks and Namesake to Solicit Consumers to Their Vacation Club.**

22. Defendants are a conglomerate of entities and individuals involved in a complex network of travel club schemes that operate throughout the United States. Defendants work together, each serving various roles, to sell memberships to a “members only” vacation club for a fee ranging from \$1,900 to \$10,000 (“Vacation Club”). Defendants represent that membership in their Vacation Club will provide exclusive access to deeply discounted worldwide travel and will “pay for itself” in two or three trips. In reality, a membership to Defendants’ Vacation Club entails the consumer to little more than a sometimes-accessible telephone concierge service that offers “discounts” which are the same discounts available to consumers either online or through a travel agency.

23. Defendants' scheme originates with solicitation of unsuspecting consumers through the use of direct mail. Individuals throughout the United States, including individuals in Tarrant County, Texas, are sent postcards through U.S. Mail which purport to advertise an "American Airlines Fly Away Promotion" (the "Postcards"). The Postcards use AMERICAN AIRLINES, the AA with Scissor Eagle logo and trade dress, stating "Congratulations we've selected you to receive 2 round trip airfares to anywhere in the contiguous United States – good for the next 12 months!" The Postcards instruct the recipient to call a toll-free number to redeem the "special offer."





**AA**  
**American Airlines®** FLY AWAY PROMOTION



PRESORTED  
FIRST-CLASS MAIL  
US POSTAGE PAID  
LAS VEGAS, NV  
PERMIT NO. 2736

**Congratulations**

In celebration of our new fall packages we've selected you to receive 2 round trip airfares to anywhere in the contiguous United States — good for the next 12 months!

**Call within 48 hours and receive a 3 day 2 night hotel stay at major brands.**

To claim this special offer, simply call and mention your promo code

**Call Toll Free 1-888-639-6990** Mon-Fri 9am-9pm -- Sat 10am-4pm

PROMO CODE: PDA - 1005

Promo Code:  
PDA - 1005

Name of Traveler:

24. Defendants recently revised and updated the Postcards, misappropriating American's copyrighted photographs and displaying American's new livery and Flight Symbol.



**American Airlines**

**FLY AWAY PROMOTION**

## American Airlines

PRESORTED  
FIRST-CLASS MAIL  
US POSTAGED PAID  
LAS VEGAS, NV  
PERMIT NO. 2736

Congratulations we've selected you to receive 2 round trip airfares to anywhere in the contiguous United States - good for the next 12 months!

**Call within 48 hours** and receive a 3 day and 2 night hotel stay at major brands.

*To claim this special offer, simply call and mention your promo code*

**Call Toll Free**

**1-888-252-0898**

PROMO CODE MD809  
Mon-Sun 9am-9pm EST

All trademarks & service marks are the property of their respective owners. Offer void where prohibited by law. All companies at this offer are funded by a third party. Certain restrictions apply. Recipient responsible for all applicable taxes/fees. Please call for details.

25. Defendants also utilize personalized letters which employ what appears to be American's letterhead, and purport to come directly from American's Vice President. (The postcard and letter shall be collectively referred to herein as the "Promotions."). The Promotions confuse consumers into believing they have won a two roundtrip tickets, utilizing terms like "congratulations," "promotion," and "special offer." Defendants' letters misrepresent previous attempts impliedly made by American to contact the Postcard recipient. Defendants intentionally omit their name or a return mailing address from the Promotions, in an effort to conceal their identity and leave the false impression that the Promotions came from American. Defendant Laurent Hazout, individually and d/b/a Global Travel Consultants, among other Defendants, unlawfully create and mail the Promotions.



August 19th, 2013

NOTE: You must respond no later than August 28th, 2013.

Dear

I am pleased to inform you that you have qualified for an award of 2 roundtrip airline tickets. Congratulations. These tickets are valid for travel anywhere in the continental U.S. from any major international airport. The retail value of this award is up to \$1,229.00. Certain restrictions apply.

We have attempted contacting you several times without success. This is our last attempt. If we do not hear from you soon, we may need to issue the ticket vouchers to the alternate.

**Please call me today at 1-866-478-4331.**

Regards,

A handwritten signature in black ink, appearing to read "Juli Cole".

Juli Cole  
Vice President

112-663-854

26. Despite Defendants' representations to the contrary, the Promotions were not sponsored, endorsed, created or disseminated by American or any of its affiliates, nor has

American given any person or entity permission, authority or license to use American's Marks in connection with the Promotions.

**C. Defendants' Vacation Club is a Scam.**

27. Consumers who call the telephone number in the Promotions reach a scheduling service operated by Defendant Prestige Travel Systems, among others, masquerading under various assumed names including Featured Travel and American Travel Express. Consumers are told by the scheduler that they must attend a sales presentation to obtain the two free round-trip airline tickets. American believes that Defendants specifically, but falsely, reassure callers who inquire that they are affiliated with American. Defendants provide the consumer a date, time and location to attend the sales presentation and pick up their free tickets on American.

28. These unwary consumers are directed to offices operated by so-called "distributors," a conglomeration of Defendants charged with selling Vacation Club memberships. Defendants Jerald Jackson and Josh Durham own and operate distributorships Travel Myles and Pacific Palm, both of which hold presentations in the Dallas-Fort Worth area and around the United States. Defendant Luay Abosaad owns Five Star, which purports to be the "number one wholesaler of travel in the United States." Five Star holds presentations in the Dallas-Fort Worth area and purports to have offices around the United States. Defendants Albert Toliver and Brendan Haller lead Defendant Five Star's presentations. Defendants Stephen Wunder and Christian Wunder operate Traditions Travel, which holds presentations throughout the United States. All of these Defendants unlawfully utilize American's Marks to draw unsuspecting consumers to their sales presentations.

29. Defendants operate with a singular goal – to get as much money as possible from each consumer that walks through the door. Through dynamic PowerPoint presentations, glossy

color brochures, and a slick sales pitch, Defendants promise huge, almost unbelievable savings on travel, available only through membership in the Vacation Club. Presentations scheduled for ninety minutes often turn into three or four hours, as Defendants employ high-pressured sales tactics to close the deal. Defendants often use aliases, misrepresenting their identity to consumers that attend the presentations.

30. Defendants represent that they have exclusive relationships with American and others that allow Defendants, and in turn Vacation Club members, access to discounts that aren't available anywhere else. In reality, there is nothing "exclusive" about the services provided by Defendants. Defendants also provide consumers examples of specific deals allegedly available to their Vacation Club members. For example, Defendants promise consumers Defendants have access to a plethora of beach front condominiums, accommodating eight people, for \$99 per week, or \$1.76 per person, per day. These claims are fiction.

31. After lofty promises and incredible claims, all of which are cloaked in vagary, Defendants reveal the price of admission, typically \$9,995. If the consumer walks or balks, the price is reduced by thousands of dollars, with little or no explanation for the reduction. The price consumers pay for Defendants' Vacation Club membership varies by thousands of dollars depending on how hard the consumer pushes back. In addition to this staggering initial lump sum, members pay annual dues to Defendants to "maintain" their membership in active status.

32. In exchange for thousands of dollars paid to Defendants, the member is provided a telephone number of the so-called fulfillment company. The member is instructed to call the telephone number to book discounted travel. Defendants Sea to Ski, American Travel Planners, and M&H Acquisitions act in concert with Defendants to fulfill Vacation Club memberships sold

at the sales presentations.<sup>2</sup> Defendant Andrew Wunder is the owner of Sea to Ski. Defendant Stephen Wunder represents himself as the Managing Director of Sea to Ski and the liaison between Defendants. Both Stephen Wunder and Andrew Wunder are actively involved in facilitating Defendants' scheme, and unlawfully using American's Marks to deceive consumers.

33. Members who join Defendants' Vacation Club are often dismayed that the deals they were promised during the presentation are unavailable, and the deals they can receive through their new membership are no better than what they could find online. In fact, little do perspective members know, Sea to Ski and American Travel Planners utilize consumer websites such as Priceline and Expedia to book travel for their members. Incredibly, in addition to defrauding consumers out of thousands of dollars in membership and renewal fees, Sea to Ski and American Travel Planners secretly receive commissions for the travel booked on behalf of their members.

**D. Defendants Don't Provide the Free Tickets Promised in Their Promotions.**

34. Despite their representations in the Promotions, Defendants don't actually provide complimentary tickets to those who attend their presentation. Instead, Defendants provide a "voucher" which must be "redeemed" through a third-party fulfillment company. Prestige Travel Systems operates as a third-party voucher fulfillment company. The certificate's restrictions and requirements are so onerous that the voucher is nearly impossible to redeem. Even if a consumer is able to wade through these intentional hurdles, the consumer must pay hundreds of dollars in fees before they can redeem their "free" tickets. On some occasions consumers are told that they cannot redeem the certificate at all because it has already been redeemed. The voucher provided by Defendants is of essentially no value.

---

<sup>2</sup> In less than two years, an estimated 1700 members paid more than \$6.9 million to Sea to Ski alone.

**E. Defendants' Conduct is Harming American.**

35. As described above, Defendants are engaged in a complex intra-state scheme wherein they utilize the Promotions and misappropriate American's Marks, copyrighted photographs and associated goodwill to lure unsuspecting consumers to attend a high-pressured sales presentation. Defendants deceptively promise these consumers rewards offered in conjunction with the non-existent "American Airlines Fly Away Promotion." People who actually purchase the Vacation Club memberships and then try to use the membership often believe that they were defrauded. The Internet is littered with bitter complaints and allegations of fraud concerning Defendants and the memberships they sell. Moreover, the Colorado Attorney General sued some of the Defendants to put a stop to their scheme. Defendants' scheme misappropriates American's Marks, copyrighted photographs, and associated goodwill for Defendants own financial gain, and to American's detriment.

36. Regardless of whether or not the recipients of the Promotions actually call the toll-free number, the distribution of these postcards harms American and tarnishes its reputation. Some of the recipients undoubtedly believe as the postcard states – that American is sponsoring, endorsing or participating in Defendants' scam.

**V.**  
**CAUSES OF ACTION**

**A. Common Law Trademark Infringement Under Texas Law.**

37. American hereby incorporates by reference the foregoing paragraphs as if set forth fully herein.

38. American owns and enjoys common law rights in Texas in and to American's Marks. American's Marks are eligible for protection, and American is the senior user of



American's Marks, which have acquired secondary meaning over the many years American has used the marks.

39. Defendants copied American's Marks and displayed those marks on Defendants' Promotions and other marketing materials without American's permission. Defendants derived unlawful gains, profits, and advantages from their infringement.

40. Defendants' infringement has impaired and will continue to impair American's reputation. Defendants' use of American's Marks creates a likelihood of confusion. Through this confusion, Defendants are able to wrongfully induce unsuspecting consumers to engage in business with Defendants. In so doing, Defendants injure American's valuable goodwill with its customers.

41. As a proximate and foreseeable result of Defendants' trademark infringement, American has been damaged, for which sums American hereby sues, together with pre-judgment and post-judgment interest, in an amount which exceeds the minimum jurisdictional limits of this Court. Further, Defendants' use of American's Marks has caused American irreparable harm, and its remedy at law is not itself adequate to compensate it for injuries inflicted by Defendants. Accordingly, American is entitled to preliminary and permanent injunctive relief.

**B. Violation of Texas Anti-Dilution Act.**

42. American hereby incorporates by reference the foregoing paragraphs as if set forth fully herein.

43. Defendants are injuring and diluting, or are likely to injure and dilute, the business reputation and the distinctive quality of American's Marks through blurring and tarnishment.

44. Pursuant to Section 16.29 of the Texas Business & Commerce Code, the Court should enjoin the activities of Defendants, which are likely to injure American's business reputation or dilute the distinctive quality of American's Marks.

**C. Money Had and Received / Unjust Enrichment.**

45. American hereby incorporates by reference the foregoing paragraphs as if fully set forth herein.

46. Defendants are engaged in a scheme to lure unsuspecting consumers to attend a high-pressured Vacation Club sales presentation using American's Marks, namesake, and goodwill. Defendants' scheme improperly utilizes American's Marks for Defendants own financial gain. Defendants accepted, and upon information and belief, currently hold money derived from the scheme utilizing American's Marks, namesake and goodwill. All money received by Defendants through Defendants' scheme belongs to American in equity and good conscience.

47. As a proximate and foreseeable result of Defendants' wrongful retention of money obtained utilizing American's Marks, namesake and goodwill, American has been damaged, for which sums American hereby sues, together with pre-judgment and post-judgment interest, in an amount which exceeds the minimum jurisdictional limits of this Court.

**D. Conspiracy.**

48. American hereby incorporates by reference the foregoing paragraphs as if fully set forth herein.

49. Defendants, in combination with one another, utilized American's Marks, trade dress and namesake to lure unsuspecting consumers to Defendants' Vacation Club presentations for Defendants own financial gain, and to American's detriment. Defendants had a meeting of

the minds with respect to their intent to unlawfully utilize American's Marks, trade dress, and namesake for their own financial gain. Defendants, in combination with one another, took one or more overt acts in furtherance of this objective, including facilitating the creation and dissemination of the Promotions.

50. As a proximate and foreseeable result of Defendants' conspiracy, American has been damaged, for which sums American hereby sues, together with pre-judgment and post-judgment interest, in an amount which exceeds the minimum jurisdictional limits of this Court.

**VI.**  
**APPLICATION FOR TEMPORARY INJUNCTION AND**  
**PERMANENT INJUNCTION**

51. On October 30, 2013, a temporary injunction was entered against M&H Acquisitions, LLC, Pacific Palm Destinations, LLC, Travel Myles, LLC, Jerald Jackson, Josh Durham, Great Town Investments Group, Inc. d/b/a Five Star Vacations, Luay Taisin Abosaad, Albert E. Toliver, Brendan T. Haller, and Prestige Travel Systems, Inc.. Moreover, a permanent injunction was issued against Sea to Ski Vacations, LLC, American Travel Planners, LLC, Traditions Travel Group, LLC, Christian Wunder, and Stephen Wunder as a result of the default judgment taken against them.

52. To secure an injunction, American must demonstrate that: (1) it has pleaded for permanent injunctive relief; (2) it has a probable right to the relief sought; and (3) it will suffer irreparable and imminent harm if the Court does not grant injunctive relief. *See Walling*, 863 S.W.2d at 57; *Boylan v. Williams*, 445 S.W.2d 54, 56 (Tex. Civ. App.—Fort Worth 1969, no writ) *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002); *Town of Palm Valley v. Johnson*, 87 S.W.3d 110, 111 (Tex. 2001). American has established each of the requisite elements.

53. First, American seeks permanent injunctive relief herein. Second, American has established a probable right of recovery. A probable right of recovery is established “by simply alleging a cause of action and presenting evidence which tends to sustain it.” *Miller Paper Co. v. Roberts Paper Co.*, 901 S.W.2d 593, 597 (Tex. App.—Amarillo 1995, no writ); *accord*, *Argyle Indep. Sch. Dist. ex rel. Bd. of Trs. v. Wolf*, 234 S.W.3d 229, 236 (Tex. App.—Fort Worth 2007, no pet.). As described above, Defendants are using American’s Marks, trade dress, namesake and goodwill to lure unsuspecting consumers, who erroneously believe they are participating in a legitimate American offering, into Defendants’ scheme.

54. Third, American will suffer imminent irreparable harm in the interim if the Court does not grant injunctive relief. An applicant for injunctive relief suffers irreparable harm where there is no adequate remedy at law. *See Walling*, 863 S.W.2d at 58. As a matter of law, money damages cannot compensate for damaged goodwill. *See Frequent Flyer Depot, Inc. v. Delta Air Lines, Inc.*, 281 S.W.3d 215, 228 (Tex. App.—Fort Worth 2009, pet. denied), *cert. denied*, 130 S. Ct. 2061 (2010). “Good will is generally understood to mean the advantages that accrue to a business on account of its name, location, reputation and success.” *Allen v. Allen*, 704 S.W.2d 600, 604 (Tex. App.—Fort Worth 1986, no writ) (quoting *Taormina v. Culicchia*, 355 S.W.2d 569, 573 (Tex. Civ. App.—El Paso 1962, writ ref’d n.r.e.)); *accord Marsh USA Inc. v. Cook*, 354 S.W.3d 764, 777-78 (Tex. 2011).

55. “Goodwill is like any other form of property. It is intangible, but it is an integral part of a business. *Taormina*, 355 S.W.2d at 573. “[A]ssigning a dollar amount to such intangibles as a company’s loss of clientele, goodwill, marketing techniques, and office stability, is not easy.” *Frequent Flyer Depot, Inc.*, 281 S.W.3d at 228. “The very nature of goodwill is such as would preclude a fixed standard by which its value might be determined in every case.”

*Taormina*, 355 S.W.2d at 575. Calculating the extent of the damage to American's name and reputation in the marketplace is impossible, and the harm caused by Defendants' scheme is irreparable.

56. Finally, American has a statutory right to an injunction pursuant to Section 16.29 of the Texas Business & Commerce Code. As a result, American is entitled to an injunction regardless of whether it has an adequate remedy at law. *Butnaru*, 84 S.W.3d at 210.

57. American requests that the Court enter an injunction prohibiting Defendants from:
- (a) Using American's Marks or namesake in any fashion, including the use on Promotions or other marketing materials;
  - (b) Coordinating, facilitating, employing, or cooperating with any person or entity in the creation or dissemination of Promotions or marketing materials depicting American's Marks and/or namesake;
  - (c) Either directly or indirectly accepting money from, or selling product(s) and/or service(s) to, any person who was sent a Mailer or other marketing materials bearing American's Marks and/or namesake; and,
  - (d) Altering, deleting or destroying any information, document, or communication concerning Defendants use of American's Marks and/or namesake in any marketing materials, including the Promotions.

(Collectively, the "Prohibited Conduct").

58. The requested injunction will ensure that Defendants cease using American's Marks and namesake for their own financial gain, and cease damaging American's goodwill and reputation.

59. American requests that the Court enter a temporary injunction enjoining Defendants from the Prohibited Conduct. American further requests that, after a trial on the merits, the Court enter a permanent injunction enjoining Defendants from the Prohibited Conduct.

**VII.**  
**CONDITIONS PRECEDENT**

60. All conditions precedent to the bringing of American's claims have been performed, have occurred, and/or have been excused.

**VIII.**  
**JURY DEMAND**

61. American requests a trial by jury for all issues so triable. A jury fee will be paid.

**IX.**  
**PRAYER**

WHEREFORE, PREMISES CONSIDERED, American requests that Defendants Andrew Wunder, Bethany Wunder, and Laurent Hazout, individually and d/b/a Global Travel Consultants be cited to appear and answer herein, and that upon final trial of this matter, American have and recover the following:

- i) A permanent injunction enjoining Defendants from:
  - (a) Using American's Marks or namesake in any fashion, including the use on Promotions or other marketing materials;
  - (b) Coordinating, facilitating, employing, or cooperating with any person or entity in the creation or dissemination of Promotions or marketing materials depicting American's Marks and/or namesake;
  - (c) Accepting money from, or selling product(s) and/or service(s) to, any person who was sent a Mailer or other marketing materials bearing American's Marks and/or namesake; and,
  - (d) Altering, deleting or destroying any information, document, or communication concerning Defendants use of American's Marks and/or namesake in any marketing materials, including the Promotions.
- ii) Actual damages;
- iii) Exemplary damages as allowed by law;
- iv) Reasonable and necessary attorneys' fees;

- v) Costs of Court;
- vi) Pre-judgment and post-judgment interest as allowed by law; and,
- vii) Such other and further relief to which American may show itself justly entitled, at law, in equity or otherwise.

Dated: January 16, 2014

Respectfully submitted,

*/s/ W. Chase Medling*

---

Dee J. Kelly, Jr.

State Bar No. 11217250

Lars L. Berg

State Bar No. 00787072

Preston R. Mundt

State Bar No. 24058465

W. Chase Medling

State Bar No. 24073061

KELLY HART & HALLMAN LLP

201 Main Street, Suite 2500

Fort Worth, Texas 76102

Phone: (817) 332-2500

Fax: (817) 878-9280

**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of the foregoing document was served on all counsel of record in accordance with Texas Rule of Civil Procedure 21a(a) on this 16<sup>th</sup> day of January, 2014 as follows:

Robert J. Bogdanowicz, III  
Deans & Lyons, LLP  
Republic Center  
325 North Saint Paul Street, Suite 1500  
Dallas, Texas 75201  
***Via Facsimile to: (214) 965-8505***

Brendan Haller, *pro se*  
1732 Hickory Hill Road East  
Argyle, Texas 76226  
***Via CMRRR # 7012 1640 0000 8777 5429***

Ashkan Mehryarai  
Modjarrad & Abusaad  
100 N. Central Expressway, Suite 1000  
Richardson, Texas 75090  
***Via Facsimile to: (972) 789-1665***

Albert Toliver, *pro se*  
1428 Shady Lane # 57  
Bedford, Texas 76021  
***Via CMRRR # 7012 1640 0000 8777 5436***

Eric Fein  
The Fein Law Firm  
15455 Dallas Parkway, Suite 1225  
Addison, Texas 75001  
***Via Facsimile to: (214) 522-9599***

Robby H. Birnbaum, Esq.  
Greenspoon Marder, P.A.  
100 West Cypress Creek Road, Suite 700  
Fort Lauderdale, Florida 33309  
***Via Facsimile to: (954) 343-6960***

M&H Acquisitions  
577 Main St  
Park City, Utah 84060-5153  
***Via CMRRR # 7012 1640 0000 8777 5412***

M&H Acquisitions  
2202 West 118<sup>th</sup> Avenue  
Westminster, Colorado 80234  
***Via CMRRR # 7012 1640 0000 8777 5443***

*/s/ W. Chase Medling*

Lars L. Berg / W. Chase Medling