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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 RED LIONS HOTELS
8 FRANCHISING, INC., a Washington
9 Corporation,

Plaintiff,

10 v.

11 GHAZANFAR KHAN, an individual;
12 ZULFIQAR KHAN, an individual;
13 MOHAMMAD TAFAIL KHAN, an
14 individual;
15 KHAN/SLEEP, LLC, a Colorado
16 Limited Liability Company; and
17 TOWER HOSPITALITY, LLC, a
18 Colorado Limited Liability Company,

Defendants.

NO. 2:17-CV-0094-TOR

ORDER GRANTING PRELIMINARY
INJUNCTION

18 BEFORE THE COURT is Plaintiff Red Lion Hotels Franchising, Inc.'s
19 Motion for Preliminary Injunction (ECF No. 13) and Motion to Expedite (ECF No.
20 20). The Motion for Preliminary Injunction (ECF No. 13) was submitted for

1 consideration with oral argument on May 3, 2017. J. Michael Keys and Brian J.
2 Janura represented Plaintiff. Of the Defendants, only Defendant Ghazanfar Khan,
3 *pro se*, participated telephonically.

4 The Court has reviewed the record and files herein, and is fully informed.
5 For good cause shown and the reasons discussed below, the motions (ECF Nos. 13;
6 20) are **GRANTED**.

7 **BACKGROUND**

8 Plaintiff Red Lion Hotels Franchising, Inc. is the owner of several federally
9 registered trademarks.¹ Per franchise agreements between Plaintiff and
10 Defendants, Defendants had a license to use these trademarks contingent on their
11 compliance with the franchise agreements. ECF No. 13 at 5. According to
12 Plaintiff, Defendants have failed to pay substantial amounts due under the
13 agreements, and have therefore terminated the agreements, requiring Defendants to
14 “immediately” remove any and all Red Lion trademarks from their respective
15 hotels per the terms of the respective agreements. ECF No. 13 at 5. Plaintiff
16 contends, and supports with evidence, that Defendants have continued to use the
17 trademarks in violation of the agreement and the federal Lanham Act. ECF No. 13

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19 _____
20 ¹ U.S. Trademark Registration Nos. 4,595,255, 4,933,184,
4,933,183, 3,583,032, 3,583,031, 1,095,529, 1,915,645 and 1,485,662

1 at 6-7. Plaintiff now seeks a preliminary injunction barring Defendants from
2 further use of the trademarks.² ECF No. 13.

3 The record now reflects that all Defendants have been properly served with,
4 inter alia, the Summons, the Complaint, the Motion for Preliminary Injunction, and
5 the supporting pleadings. ECF No. 23-27, 35, 35-2, 35-3, 36.

6 DISCUSSION

7 A court should grant a preliminary injunction when a plaintiff establishes
8 “that [it] is likely to succeed on the merits, that [it] is likely to suffer irreparable
9 harm in the absence of preliminary relief, that the balance of equities tip in [its]
10 favor, and that the injunction is in the public interest.” *Marylyn Natraceuticals,*
11 *Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 877 (9th Cir. 2009) (citing
12 *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 374 (2008)). Plaintiff
13 contends that all four factors strongly favor Red Lion and the issuance of a
14 preliminary injunction. The Court agrees.

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17 ² Notably, Plaintiffs have submitted a sworn affidavit attaching a transcript
18 from a voicemail left by Defendant Ghazanfar Khan claiming a “majority” of the
19 trademarks had already been removed, evidencing Defendant’s recognition that
20 their use of the trademarks is not authorized. ECF Nos. 14 at 6; 14-8 at 2

1 To prevail on a claim of trademark infringement, the plaintiff must
2 demonstrate that it (1) owns a valid trademark, and that (2) it shows the
3 defendant's mark is likely to cause confusion. 15 U.S.C. § 1114(1); *Brookfield*
4 *Commc 'ns, Inc. v. W. Coast Entm 't Corp.*, 174 F.3d 1036, 1046 (9th Cir. 1999).
5 Plaintiff's federal registrations demonstrate the validity of the trademarks, and the
6 Defendants explicitly acknowledged the ownership rights in the mark. ECF No.
7 14-3 at 6, ¶ 4. Further, Plaintiff clearly demonstrated a likelihood of consumer
8 confusion: (1) the mark is strong, as it is inherently distinctive and arbitrary with
9 respect to the underlying hotel services; (2) the services are identical; (3) the
10 trademarks are identical; (4) there is evidence of actual confusion;³ (5) the
11 marketing channels are the same or at least very similar; (6) customers would not
12 be able to distinguish the services of Plaintiff and Defendant, regardless of the
13 degree of care exercised; (7) Defendants selected the mark because of its desire to
14 be a franchisee per the franchise agreement; and (8) the underlying services are
15 identical, precluding the need to determine likelihood of expansion. *See AMF Inc.*
16 *v. Sleekcraft Boats*, 599 F.2d 341, 348-49 (9th Cir. 1979), abrogated in part, on

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19 ³ *See, e.g.*, ECF No. 13 at 13-14 (referencing a review of the Ft. Collins Hotel
20 as "Higher expectation for a Red Lion" while rating the hotel 2 out of 5.)

1 other grounds recognized by *Mattel, Inc. v. Walking Mountain Prods.*, 353 F.3d
2 792, 810 n.19 (9th Cir. 2003).

3 As demonstrated by the actual confusion and negative reviews of the hotels
4 bearing the infringing trademarks, Plaintiff has demonstrated a likelihood of
5 irreparable harm. Notably, the negative impression of customers of Defendants'
6 hotels will likely impact their future purchasing choices, and Defendants'
7 continued use of the trademarks will serve to promote the false association.
8 Financial recovery will not adequately or fairly compensate this harm. *See*
9 *Sunearth, Inc. v. Sun Earth Solar Power, Co., Ltd.*, 846 F. Supp. 2d 1063, 1083
10 (N.D. Cal. 2012) (the loss of goodwill and ability to control plaintiff's reputation is
11 irreparable where the plaintiff has made a significant investment of time in
12 establishing a reputation).

13 The balance of equities strongly tips in favor of Plaintiff. As noted above,
14 Plaintiff's brand is suffering irreparable harm due to Defendant's apparently sub-
15 standard services. Plaintiff is the undisputed owner of the trademarks and has put
16 significant effort into building its image associated with the trademarks. Although
17 Defendants will have to take drastic efforts to remove the infringing material, this
18 is merely a consequence of the terminated agreement and does not suggest an
19 inequity on Defendant's part.

1 Finally, the injunction is in the public interest. Consumers are currently
2 being deceived into believing Defendants' hotels are affiliated with Red Lion. As
3 the negative reviews demonstrate, the public is being harmed because they are
4 receiving a quality of service that is below what they expect when visiting a Red
5 Lion hotel. The very purpose of federal and state trademark laws are the protection
6 of consumers in the marketplace.

7 At the May 4, 2017 hearing, Defendant Ghazanfar Khan voiced no objection
8 to the entry of an injunction, explaining that they were no longer using anything
9 with the Red Lion brand.

10 **ACCORDINGLY, IT IS HEREBY ORDERED:**

11 Plaintiff's Motion for Preliminary Injunction (ECF No. 13) and Motion to
12 Expedite (ECF No. 20) are **GRANTED**.

13 1. Defendants are hereby immediately enjoined and ordered to cease and
14 desist, during the pendency of this case, from further use of the Red Lion
15 trademarks, alone and in combination with Defendants' current and
16 future business or commercial interests, or goods and services. This
17 injunction order restrains and enjoins, without limitation:

18 a. Displaying, advertising, marketing, promoting, stating or
19 suggesting affiliation with, or otherwise using in commerce, or
20 contributing to the use in commerce, any of the Red Lion

1 trademarks listed above, or using or contributing to the use in
2 commerce any goods or products bearing any of the Red Lion
3 trademarks;

4 b. Engaging in any activity that misleads, or confuses, or is likely to
5 confuse the public to the detriment of Red Lion, including (without
6 limitation) any activity that constitutes a violation of 15 U.S.C.
7 § 1125(a)(1);

8 c. Using or displaying the Red Lion trademarks in connection with
9 the promotion of any business or commercial enterprise;

10 d. Engaging in any activity that could, or is likely to lead anyone to
11 believe that any product or service of the Defendants has been
12 produced, distributed, offered, advertised, displayed, licensed,
13 sponsored, approved, authorized, or otherwise used in commerce
14 by or for Red Lion, and

15 e. Assisting, aiding, abetting, or contributing to any other person or
16 entity in engaging in, or performing any of the activities referred to
17 above.

18 2. Pursuant to 15 U.S.C. § 1116, the Defendants (each individually or if by
19 agreement, jointly) are further ordered, to file with the Court and serve
20 upon the Plaintiff, a declaration confirming compliance with the

1 injunctive relief awarded by the Court herein, by, without limitation,
2 confirming the removal of all the Red Lion trademarks from Defendants'
3 advertising and promotional materials (including websites and social
4 media), and the removal of all the Red Lion trademarks from Defendants'
5 vehicles promoting Defendants' business and commercial interests, or
6 goods, or services. The declaration ordered by this paragraph shall be
7 filed with the Court **within 30 days after service of this Order** upon
8 each Defendant.

- 9 3. Plaintiff shall cause this Order Granting Preliminary Injunction to be
10 served upon each Defendant in accordance with Fed. R. Civ. P. 65(d)(2).
11 Before any motion seeking enforcement of the same, proof of service
12 must be filed of record.

13 The District Court Executive is directed to enter this Order and furnish
14 copies to the parties who have appeared herein.

15 **DATED** May 4, 2017.



Thomas O. Rice
THOMAS O. RICE
Chief United States District Judge