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 7 BELLAGIO, LLC and
 MIRAGE RESORTS, INCORPORATED
 8

9
 10 **UNITED STATES DISTRICT COURT**
 11 **DISTRICT OF NEVADA**

12 BELLAGIO, LLC, a Nevada limited liability
 13 company, and MIRAGE RESORTS,
 INCORPORATED, a Nevada corporation,

14 Plaintiffs,

15 v.

16 BELLAGIO SHOES, INC., a California
 17 corporation, SHLOMO RONEN, an individual,
 BERTINI SHOES, INC., a California
 18 corporation, and ITZHAK BEN SHOSHAN,
 an individual,

19 Defendants.
 20

COMPLAINT

21 For their complaint, Plaintiffs Bellagio, LLC and Mirage Resorts, Incorporated (“MRI”),
 22 together referred to herein as “Plaintiffs” or “Bellagio,” allege the following:

23 **NATURE OF THE CASE**

24 This is an action by Bellagio against Defendants Bellagio Shoes, Inc. (“Bellagio Shoes”),
 25 Shlomo Ronen (“Ronen”), Bertini Shoes, Inc. (“Bertini Shoes”), and Itzhak Ben Shoshan (“Ben
 26 Shoshan”) (together the “Defendants”) for trademark infringement, trademark dilution, and unfair
 27 competition under federal statutory and state common law. The Defendants have adopted and are
 28 using Bellagio’s federally registered B BELLAGIO design mark as well as Bellagio’s federally

1 registered BELLAGIO word mark in commerce in connection with a retail shoe, handbag, and
2 accessory store located in Santa Monica, California. The Defendants are using Bellagio's B
3 BELLAGIO and BELLAGIO marks in a manner that is likely to cause confusion, cause mistake,
4 or to deceive consumers as to an affiliation, connection, or association between Defendants and
5 Bellagio, or as to the origin, sponsorship, or approval of Defendants' commercial activities by
6 Bellagio. Defendants are also using the marks in a manner that is likely to dilute the
7 distinctiveness of the famous BELLAGIO mark. Bellagio is seeking injunctive relief, damages,
8 attorneys' fees, and costs.

9 JURISDICTION AND VENUE

10 1. This Court has original subject matter jurisdiction over Plaintiffs' statutory
11 trademark claims pursuant to 15 U.S.C. § 1121, 28 U.S.C. § 1338(a), and 28 U.S.C. § 1331
12 because Plaintiffs' claims arise under the Constitution, laws, or treaties of the United States. This
13 Court has supplemental jurisdiction over Plaintiffs' state and common law claims under 28 U.S.C.
14 § 1367, because those claims are related to claims under this Court's original jurisdiction and form
15 part of the same case or controversy under Article III of the United States Constitution.

16 2. This Court has personal jurisdiction over the Defendants based upon their operation
17 of highly interactive websites accessible to residents located in the State of Nevada and through
18 which such residents can: (1) purchase men's and women's shoes, handbags and other accessories
19 for shipment into Nevada; and (2) register for an account on the website. In addition, this Court
20 has person jurisdiction over the Defendants based upon their commission of intentional torts
21 purposefully directed at Nevada residents with the knowledge that Plaintiffs are located in the
22 State of Nevada and would suffer injury in the State of Nevada. Moreover, Plaintiffs' claims arise
23 out of the Defendants' contacts with the State of Nevada and the Court's exercise of personal
24 jurisdiction over the Defendants would be reasonable.

25 3. Venue is appropriate in this district pursuant to 28 U.S.C. § 1391(b)(2), because a
26 substantial part of the events which give rise to the Plaintiffs' claims has occurred, and continues
27 to occur, in this judicial district, and the situs of the intellectual property at issue is deemed to be
28 located in this judicial district. Venue is appropriate in the unofficial southern division of the

1 United States District Court for the District of Nevada.

2 **THE PARTIES**

3 4. Bellagio, LLC is a Nevada limited liability company with its principal place of
4 business in Las Vegas, Nevada. Bellagio, LLC owns and operates the Bellagio resort hotel and
5 casino in Las Vegas, Nevada.

6 5. Mirage Resorts, Incorporated (defined above as “MRI”) is a Nevada corporation
7 with its principal place of business in Las Vegas, Nevada. MRI is the parent corporation and
8 owner of Bellagio LLC, and owns the BELLAGIO Marks (defined below) used by Bellagio, LLC.

9 6. Upon information and belief, Bellagio Shoes is a California corporation whose
10 principal place of business is located at 120 Broadway #102, Santa Monica, California, 90401.

11 7. Upon information and belief, Bertini Shoes is a California corporation whose
12 principal place of business is or was located at 120 Broadway #102, Santa Monica, California,
13 90401.

14 8. Upon information and belief, Ronen is an individual residing in California. Ronen
15 is the registered owner of the <b-shoes.com> Internet domain name and website.

16 9. Upon information and belief, Ben Shoshan is an individual residing in California.
17 Ben Shoshan is the registered owner of the <bertini-shoes.com> Internet domain name and
18 website.

19 10. Upon information and belief, Bellagio Shoes, Bertini Shoes, Ronen, and Ben
20 Shoshan are each the alter ego of the other.

21 **ALLEGATIONS COMMON TO ALL CLAIMS**

22 11. The Bellagio is a world-famous resort hotel and casino located on the Las Vegas
23 Strip in Las Vegas, Nevada. The Bellagio features 3,933 guest rooms, 100,000 square feet of
24 gaming, five pools, the Fountains of Bellagio, a conservatory and botanical garden, the Bellagio
25 Gallery of Fine Art, a luxury shopping promenade, a spa and salon, Cirque du Soleil’s O show,
26 world-renowned restaurants, lounges, a nightclub, wedding chapels, convention and meeting
27 rooms, and numerous other amenities.

28 12. Since opening in 1998, Bellagio has continuously used the BELLAGIO trademark,

1 including the BELLAGIO word mark and a mark comprised of the word BELLAGIO against an
2 enlarged scripted B (the “B BELLAGIO Mark”) (collectively, the “BELLAGIO Marks”) in
3 commerce in connection with a wide variety of goods and services.

4 13. Bellagio has received widespread recognition and numerous awards. Some of
5 these awards include:

- 6 • AAA Five Diamond Award, 2002 - 2010;
- 7 • **Celebrated Living** #1 Hotel in the U.S., Readers Choice Platinum List, 2009;
- 8 • **Condé Nast Traveler Magazine** Gold List of the World’s Best Places to Stay, 2008;
- 9 • **Expedia Insiders Select** Top Destination Resort, 2009;
- 10 • **Forbes Traveler Magazine** World’s 400 Best Hotels, 2008;
- 11 • **Market Metrix Hospitality Index** Best Upscale Casino Hotel, 2008;
- 12 • **Mobil** Four-Star Mobil Travel Guide Award, 2008, 2009;
- 13 • **Travel + Leisure Magazine** Top 500 World’s Best Hotels, 2009, 2010;
- 14 • **Travel Weekly** - Readers Choice Award 2008;
- 15 • **Qantas** Frequent Flyer Favorite Hotel, 2009; and the
- 16 • **Zagat Survey** Top Overall, 2008; Most Popular Hotel, 2008.

17 14. Bellagio has spent millions of dollars to advertise and promote the BELLAGIO
18 Marks and the associated goods and services in a variety of media, including, print, broadcast, and
19 on the Internet through the web site accessible at <bellagio.com>.

20 15. Bellagio has been featured in the media throughout the United States and around
21 the world, including in newspapers, magazines, television programs, and movies, such as Ocean’s
22 Eleven and Ocean’s Thirteen.

23 16. Millions of consumers visit the Bellagio resort hotel casino each year.

24 17. Bellagio owns several federal trademark registrations listed on the Principal
25 Register of the United States Patent and Trademark Office (the “USPTO”), for the BELLAGIO
26 Mark including, among others:

- 27 a. BELLAGIO for hotels, beauty salons, and health spas (Registration
28 No. 2,232,487);

- 1 b. BELLAGIO for casinos and live entertainment services in the nature
2 of performances by singers, comedians, dancers, and musical groups
3 (Registration No. 2,232,486);
- 4 c. BELLAGIO for photography services (Registration No. 2,964,701);
- 5 d. BELLAGIO for providing convention facilities and providing banquet
6 and social function facilities for special occasions (Registration No.
7 2,915,992);
- 8 e. BELLAGIO for wedding chapel services (Registration No. 2,959,168);
- 9 f. BELLAGIO for real estate investment and real estate management
10 (Registration No. 2,873,850);
- 11 g. BELLAGIO for residential and commercial building construction and
12 real estate development; land development services, namely, planning
13 and laying out of residential and/or commercial communities; building
14 construction and repair; construction management; construction
15 planning; construction services, namely, planning, laying out and
16 custom construction of residential and commercial communities
17 (Registration No. 2,873,849);
- 18 **h. BELLAGIO for retail store services, namely, retail apparel and**
19 **clothing stores; retail shops featuring perfume, cologne, cosmetics,**
20 **personal body care lotions, soaps, gels and body sprays; retail**
21 **store services featuring handbags, purses, shoes and accessories;**
22 **retail store services featuring convenience store items**
23 **(Registration No. 3,725,615);**
- 24 **i. BELLAGIO for wearing apparel, namely, t-shirts, tank tops,**
25 **collared golf shirts, sweaters, jackets, jogging suits, sweat shirts,**
26 **sweat pants, short pants, swim wear, dress shirts, skirts, blouses,**
27 **dress pants, caps, hats and bandannas (Registration No.**
28 **2,313,142);**

- 1 j. **BELLAGIO** for cologne, perfume, eau de toilette, body lotion,
2 **hand cream, facial moisturizer, facial cleansers, facial toners,**
3 **facial masques, bath and shower gels, massage oils, bath oils, bath**
4 **salts, bath soaps, aromatherapy oils, body powder, suntan lotions**
5 **containing sun screens, suntan lotions, hair shampoo, hair**
6 **conditioner, hair styling preparations, hair spray, lip gloss, lipstick**
7 **and facial cosmetics, namely, foundation, powder, blush concealer,**
8 **eye shadow, eye liner, and mascara (Registration No. 2,559,405);**
- 9 k. B BELLAGIO (stylized version of Bellagio with a scripted B in the
10 background (hereinafter, “B BELLAGIO”) for casino and
11 entertainment services in the nature of live performances by singers
12 (Registration No. 2,570,928);
- 13 l. B BELLAGIO (stylized) for photography services (Registration No.
14 2,964,700);
- 15 m. B BELLAGIO (stylized) for conducting and providing facilities for
16 special events featuring casino and gaming contests and tournaments;
17 botanical gardens; health club services; booking of theatre tickets;
18 special event planning; cabarets; night clubs; amusement arcades;
19 beach and pool clubs, namely, providing fitness and exercise facilities
20 featuring pools and bathing and showering facilities; providing
21 information in the field of gaming and entertainment via the internet
22 (Registration No. 3,466,805);
- 23 n. B BELLAGIO (stylized) for restaurant services; bar and lounge
24 services; providing convention facilities; providing banquet and social
25 function facilities for special occasions; catering; providing travel
26 lodging information services via the internet; providing information in
27 the fields of dining, hospitality and exhibition facilities via the
28 internet; travel agency services, namely, making reservations and

1 booking for temporary lodging, restaurants and meals (Registration
2 No. 3,491,777);

3 **o. B BELLAGIO (stylized) for retail store services, namely, retail**
4 **apparel and clothing stores; retail shops featuring perfume,**
5 **cologne, cosmetics, personal body care lotions, soaps, gels and**
6 **body sprays; retail store services featuring handbags, purses,**
7 **shoes and accessories; retail store services featuring convenience**
8 **store items (Registration No. 3,725,616);**

9 p. B BELLAGIO (stylized) for art galleries; issuing gift certificates
10 which may then be redeemed for goods or services; providing facilities
11 for business meetings; providing information in the field of shopping
12 via the internet (Registration No. 3,466,804);

13 **q. B BELLAGIO (stylized) for clothing, namely, t-shirts; tank tops;**
14 **polo shirts; sweatshirts; jackets; shorts; sundresses; two-piece sets**
15 **comprised of tops and bottoms; headwear; sleepwear; socks**
16 **(Registration No. 3,702,271);**

17 r. B BELLAGIO (stylized) for hotel, beauty salons and health spas
18 (Registration No. 2,514,690);

19 s. B BELLAGIO (stylized) for wedding chapel services (Registration
20 No. 2,924,850); and

21 **t. B (stylized, scripted B without Bellagio) for wearing apparel,**
22 **namely, shirts, t-shirts, polo shirts, golf shirts, tank tops, vests,**
23 **blouses, sweaters, parkas, turtlenecks, pullovers, skirts, shorts,**
24 **jeans, slacks, pants, robes, nightshirts and night gowns, pajamas,**
25 **robes, rompers, coveralls, mitten, gloves, undergarments, jerseys,**
26 **leotards, hosiery, socks, booties, slippers, scarves, belts, neckties,**
27 **suspenders, headbands, hats, caps, visors, blazers, rain ponchos,**
28 **jackets, wind resistant jackets, warm-up suits, jogging suits,**

1 sweatshirts, sweat pants, beach wear, namely, bathing suits, beach
2 sandals, beach towels, footwear, namely shoes, boots, sandals,
3 sneakers and athletic shoes, robes, bath wraps, and slippers
4 **(Registration No. 2,702,242).**

5 18. Since at least as early as 1998, Bellagio has used the BELLAGIO Marks in
6 connection with retail services including the advertising and sale of shoes, handbags, clothing and
7 accessories in the United States. True and accurate images of the BELLAGIO stylized marks are
8 shown below as Figure A and Figure B.



13 **Figure A**



16 **Figure B**

17 19. The foregoing federal trademark registrations are valid and subsisting and have not
18 been abandoned, cancelled or revoked. Moreover, Bellagio's federal trademark registration nos.
19 2,232,486, 2,232,487, 2,260,030, 2,313,142, 2,514,690, 2,559,405, 2,570,928, 2,702,242,
20 2,788,470, 2,873,850, 2,924,850, 2,959,168, 2,964,700, and 2,964,701, have become incontestable
21 through the filing of Section 8 and 15 affidavits with the USPTO.

22 20. In addition to its federal trademark registrations, Bellagio owns Nevada state
23 trademark registrations and common law rights in and to the BELLAGIO Marks for a variety of
24 goods and services.

25 21. Based on the widespread recognition of the BELLAGIO Marks, Bellagio's
26 extensive and widespread use of the BELLAGIO Marks, and other relevant factors, the
27 BELLAGIO Marks have become famous within the meaning of the Trademark Dilution Revision
28 Act.

 22. Upon information and belief, the Defendants have been using marks that are the
same or confusingly similar, in sight, sound, and meaning, to the BELLAGIO Marks to offer for
sale and to sell men's and women's shoes, handbags and accessories through a retail store located

1 at 120 Broadway, Santa Monica, California, 90401, and through interactive Internet websites
2 located at <b-shoes.com> and <bertini-shoes.com>.

3 23. Upon information and belief, the Defendants have used and are using a mark that is
4 identical to Bellagio's B BELLAGIO Mark (Figure A above) on the exterior signage of the
5 Defendants' retail store in Santa Monica, California. A true and accurate image of the exterior
6 signage of Defendants' retail store is shown below as Figure C.



11 **Figure A (from above)**



12 **Figure C**

13 24. The Defendants could have adopted a mark that did not include Bellagio's B
14 BELLAGIO Mark, such as BERTINI without the stylized letter "B," or any host of other names
15 that would not have infringed upon Bellagio's rights. Instead, by using Bellagio's B BELLAGIO
16 Mark, the Defendants are trading off of Bellagio's goodwill and reputation.

17 25. Upon information and belief, the Defendants have also used and are using a mark
18 identical to Bellagio's stylized B mark (Figure B from above) in commerce on <b-shoes.com> and
19 <bertini-shoes.com> to offer for sale and sell men's and women's shoes, handbags and
20 accessories. True and accurate images of the Defendants' use on <b-shoes.com> and <bertini-
21 shoes.com> is set forth below as Figure D and Figure E, respectively.



24 **Figure D**



25 **Figure E**

26 26. Upon information and belief, the Defendants began using the Bellagio word mark
27 and the Bellagio word mark in connection with a stylized letter "B" long after Bellagio began
28 using the BELLAGIO Marks in commerce and after the BELLAGIO Marks had become famous.

27. Upon information and belief, the Defendants were aware of Bellagio's rights in the

1 BELLAGIO Marks prior to or at the time they adopted their infringing marks. This is evidenced
2 by the fact that the Defendants changed the name of their retail store from “Bertini” to “Bellagio”
3 to more closely resemble the BELLAGIO Marks.

4 28. At no time has Bellagio consented to, licensed, or authorized the Defendants to use
5 the BELLAGIO Marks for any purpose whatsoever.

6 29. The Defendants’ unauthorized use of the BELLAGIO Marks in connection with the
7 offering for sale and sale of men’s and women’s shoes, handbags and accessories is likely to cause
8 confusion, or to cause mistake, or to deceive consumers as to the affiliation, connection, or
9 association between the Defendants and Bellagio, or as to the origin, sponsorship, or approval of
10 the Defendants’ goods and services by Bellagio. Indeed, consumers are likely to believe that
11 Bellagio has authorized or licensed the Defendants to sell men’s and women’s shoes, handbags
12 and accessories.

13 30. In addition, the Defendants’ unauthorized use of marks that are identical to or
14 confusingly similar to the BELLAGIO Marks is likely to dilute the distinctiveness of the
15 BELLAGIO Marks.

16 31. The Defendants’ unauthorized conduct has caused and is likely to cause Bellagio to
17 suffer damages and irreparable injury, including loss of reputation and goodwill, unless
18 Defendants’ conduct is enjoined.

19 32. This is an exceptional case because, among other things, the Defendants’ tortious
20 conduct was willful.

21 **COUNT I**

22 (Trademark infringement under
the Lanham Act, 15 U.S.C. § 1114)

23 33. The Defendants’ unauthorized use in commerce of marks that are identical to or
24 confusingly similar to the BELLAGIO Marks constitutes a reproduction, copying, counterfeiting,
25 and colorable imitation of the BELLAGIO Marks in a manner that is likely to cause confusion or
26 mistake or deceive consumers.

27 34. The Defendants’ unauthorized use in commerce of marks that are identical to or
28 confusingly similar to the BELLAGIO Marks in connection with the sale, offering for sale, or

1 advertising of men's and women's shoes, handbags, and accessories is likely to cause confusion or
2 mistake, or to deceive consumers as to an affiliation, connection, or association with Bellagio or as
3 to the origin, sponsorship, or approval of Defendants' commercial activities by Bellagio.

4 35. As a direct and proximate result, of the Defendants' conduct, the Defendants have
5 caused and will cause Bellagio to suffer irreparable injury and damages in an amount to be
6 determined at trial.

7 **COUNT II**
8 (Trademark dilution under
9 15 U.S.C. § 1125(c))

10 36. Bellagio incorporates the allegations in the preceding paragraphs as if fully set
11 forth herein.

12 37. The BELLAGIO Marks are famous within the meaning of the Federal Trademark
13 Dilution Act.

14 38. The Defendants adopted and began using marks that are identical to or confusingly
15 similar to the BELLAGIO Marks in commerce after the BELLAGIO Marks became famous. At
16 no time has Bellagio ever consented to, licensed, or authorized the Defendants to use the
17 BELLAGIO Marks for any purpose whatsoever.

18 39. The Defendants' unauthorized adoption and use in commerce of marks that are
19 identical to or confusingly similar to the BELLAGIO Marks is likely to dilute the distinctiveness
20 of the BELLAGIO Marks within the meaning of the Federal Trademark Dilution Act.

21 40. As a direct and proximate result of the Defendants' conduct, Bellagio has suffered
22 irreparably injury and damages in an amount to be determined at trial.

23 **COUNT III**
24 (Unfair Competition under
25 the Lanham Act, 15 U.S.C. § 1125(a))

26 41. Bellagio incorporates the allegations in the preceding paragraphs as if fully set
27 forth herein.

28 42. The Defendants' unauthorized use of marks that are identical to or confusingly
similar to the BELLAGIO Marks in commerce constitutes a false designation of origin which is
likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or

1 association of the Defendants with Bellagio, or as to the origin, sponsorship, or approval of the
2 Defendants' goods and services by Bellagio.

3 43. As a direct and proximate result of the Defendants' conduct, the Defendants have
4 caused and will cause Bellagio to suffer irreparable injury and damages in an amount to be
5 determined at trial.

6
7 **COUNT IV**
(Common law unfair competition)

8 44. Bellagio incorporates the allegations in the preceding paragraphs as if fully set
9 forth herein.

10 45. The Defendants' unauthorized use of marks that are identical to or confusingly
11 similar to the BELLAGIO Marks in commerce in connection with the offering for sale and sale of
12 men's and women's shoes, handbags and accessories constitutes unfair competition under the
13 common law of the State of Nevada.

14 46. As a direct and proximate result of the Defendants' conduct, Bellagio has suffered
15 and will suffer irreparable injury and damages in an amount to be determined at trial.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Bellagio respectfully prays that the Court:

3 A. Preliminarily and permanently enjoin and restrain the Defendants and all of their
4 agents, servants, and employees, and all other persons acting in concert or participation with the
5 Defendants, from directly or indirectly using the BELLAGIO Marks or any colorable imitations
6 thereof, whether alone or in combination with any other word, letter, letter string, or design;

7 B. Require the Defendants to account to Bellagio for any and all profits derived by the
8 Defendants from the sale of their goods and for all damages sustained by Bellagio by reason of
9 said acts of infringement and unfair competition complained of herein;

10 C. Award Bellagio the costs of this action;

11 D. Find that this is an exceptional case and award Bellagio its reasonable attorneys'
12 fees; and

13 E. Grant Bellagio such other and further relief as it deems just and reasonable.

14 Dated: this 8th day of December, 2011.

15 LEWIS AND ROCA LLP

16 BY: /s/ Michael J. McCue

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21 BELLAGIO, LLC and

22 MIRAGE RESORTS, INCORPORATED