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

12 CITYCENTER LAND, LLC,
13 a Nevada limited liability company,

14 Plaintiff,

15 vs.

16 PAPILLON AIRWAYS, INC.,
17 an Arizona corporation, and
18 MONARCH ENTERPRISES, INC.,
19 a Washington corporation,

20 Defendants.

Case No.:

COMPLAINT

21 Plaintiff CityCenter Land, LLC (“CityCenter Land”), for its complaint against
22 Defendants Papillon Airways, Inc. and Monarch Enterprises, Inc., alleges as follows:

23 **NATURE OF THE CASE**

24 CityCenter Land seeks a declaratory judgment that its use of the PAPILLON mark
25 in connection with a high-end retail store in Las Vegas does not violate Defendants’ rights
26 in the PAPILLON mark for use in connection with helicopter and bus tour services, and
27 related goods and services incidental thereto, including, among others, clothing, bumper
28 stickers, pens, calendars, maps, and post cards. CityCenter Land also asserts a claim for
misrepresentation.

JURISDICTION

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2 1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and
3 1338(a). Jurisdiction is also proper under 28 U.S.C. §1332(a), because there is complete
4 diversity of citizenship between CityCenter Land and Defendants and the amount in
5 controversy in this action exceeds \$75,000, exclusive of costs and interest.

6 2. CityCenter Land is a limited liability company formed under the laws of the
7 State of Nevada with its principal place of business in Las Vegas, Nevada.

8 3. Upon information and belief, Defendant Papillon Airways, Inc. (“Papillon
9 Airways”) is an Arizona corporation with its principal place of business in Kirkland,
10 Washington.

11 4. Upon information and belief, Defendant Monarch Enterprises, Inc.
12 (“Monarch”) is a Washington corporation with its principal place of business in Kirkland,
13 Washington.

14 5. Upon information and belief, Monarch is a subsidiary or affiliate of Papillon
15 Airways. Monarch and Papillon Airways will be collectively referred to as “Defendants.”

16 6. This Court has general and specific personal jurisdiction over the
17 Defendants. The Court has general jurisdiction over the Defendants based on Defendants’
18 transaction of business in this judicial district, including, among other things, the
19 Defendants’ operation of helicopter terminals in Las Vegas and Boulder City, Nevada, and
20 Defendants’ extensive targeted advertising and offering of helicopter tour services in the
21 State of Nevada. This Court has specific jurisdiction over the Defendants based on the fact
22 that the Defendants has expressly aimed their conduct at CityCenter Land in the State of
23 Nevada knowing that such conduct would cause injury to CityCenter Land in the State of
24 Nevada. CityCenter Land’s claims arise out of Defendants’ contacts with the State of
25 Nevada.

26 7. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b). Venue lies
27 in the unofficial Southern division of this Court.

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FACTUAL ALLEGATIONS

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2 8. CityCenter Land owns and is developing the CityCenter project on the Las
3 Vegas Strip. CityCenter spans 67 acres and 18 million square feet making it the largest
4 single privately funded construction project in United States history. Upon completion,
5 CityCenter will be comprised of hotels, condominiums, a casino, and a 500,000 square
6 foot retail and dining complex known as The Crystals.

7 9. CityCenter, directly or through a subsidiary, will own and operate a high-end
8 retail store at The Crystals using the name “Papillon,” which is French for butterfly. At the
9 Papillon store, CityCenter intends to sell high-end designer brand handbags, wallets, belts,
10 scarves, jewelry, hats, and gloves with expected prices primarily ranging from
11 approximately \$500 to more than \$10,000 per item. CityCenter does not intend to sell any
12 goods bearing the Papillon name.

13 10. On September 15, 2008, CityCenter Land filed an intent-to-use trademark
14 application (Serial No. 77/570446) with the United States Patent and Trademark Office
15 (“USPTO”) for registration of the PAPILLON word mark for retail store services featuring
16 handbags, wallets, belts, scarves, jewelry, hats, and gloves in International Class 35. The
17 application was published for opposition on August 18, 2009.

18 11. On June 3, 2009, CityCenter Land filed an intent-to-use trademark
19 application (Serial No. 77/751480) with the USPTO for registration of the PAPILLON and
20 design mark (shown below) for retail store services featuring handbags, wallets, belts,
21 scarves, jewelry, hats, and gloves in International Class 35.



25 The application was published for opposition on October 20, 2009.

26 12. CityCenter Land is incurring substantial expenses in connection with the
27 build out and planned opening of the PAPILLON store at The Crystals.

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1 13. On September 3, 2009, Defendant Papillon Airways, through counsel, sent a
2 cease and desist letter to CityCenter Land. In the letter, Papillon Airways claimed that it
3 owns federal trademark registration no. 1,879,685 for the PAPILLON mark for the
4 following goods and services:

5 (a) bumper stickers, calendars, identification tags, letter openers, maps,
6 paper coasters, pencils, pens, photographic slides, post cards, posters
7 and travel books;

8 (b) men's, women's, and children's clothing; namely, dresses, hats, jackets,
9 pants, shirts, shorts, skirts, slippers, socks, sweatpants, sweatshirts,
10 sweaters, T-shirts, tank tops, vests, and visors, all sold in connection
11 with the promotion of helicopter and/or bus tour services;

12 (c) maintenance and repair services for aircraft and aircraft engines;

13 (d) helicopter and bus transportation and tour services;

14 (e) entertainment services in the nature of multi-media presentations
15 involving audio, video and slide media; and

16 (f) mail order catalog services featuring adult, child and infant unisex
17 clothing which promote applicant's helicopter and/or bus transportation
18 and/or tour services.

19 (“Papillon Registered Mark”).

20 14. In the cease and desist letter, Papillon Airways claimed that it operates
21 helicopter tours in the Las Vegas and Grand Canyon area under the Papillon Registered
22 Mark and operates gift shops at its offices at the “Las Vegas Airport, Boulder City,
23 Nevada, and the South Rim of the Grand Canyon.”

24 15. In the cease and desist letter, Papillon Airways claimed that CityCenter
25 Land’s use of the PAPILLON mark in connection with retail store services is likely to
26 cause public confusion with Papillon Airways’ “well known PAPILLON brand in that the
27 public may tend to wrongly believe that [CityCenter Land’s] shops are affiliated with,
28 licensed by, or approved by, [Papillon Airways].”

1 16. In the cease and desist letter, Papillon Airways claimed that CityCenter
2 Land's use of the PAPILLON mark constitutes trademark infringement and unfair
3 competition in violation of the Lanham Act, 15 U.S.C. §§ 1114 and 1125(a). Papillon
4 requested that CityCenter Land "immediately cease and desist from any further use of the
5 name PAPILLON or any mark including the name PAPILLON in connection with retail
6 store services" and withdraw CityCenter Land's pending trademark application Serial No.
7 77/570446.

8 17. Contrary to Defendants' representations, Defendants' Las Vegas gift shop is
9 not operated under the PAPILLON mark and does not sell PAPILLON branded products.

10 18. Contrary to Defendants' representation, Monarch Enterprises, not Papillon
11 Airways, owns the uses the Papillon Registered Mark.

12 19. Contrary to Defendants' representation, Defendants use the PAPILLON
13 GRAND CANYON HELICOPTERS mark (shown below), rather than PAPILLON alone,
14 in connection with their goods and services.



19 20. Upon information and belief, Defendants use the PAPILLON GRAND
20 CANYON HELICOPTERS mark primarily for helicopter tours.

21 21. Upon information and belief, Defendants' use of the PAPILLON GRAND
22 CANYON HELICOPTERS mark on goods is limited to the purpose of promoting
23 Defendants' helicopter services.

24 22. On October 28, 2009, Defendants sent another cease and desist letter
25 demanding that CityCenter withdraw both of its applications to register the PAPILLON
26 mark. Defendants also demanded that CityCenter agree not to the PAPILLON mark.

27 23. Upon information and belief, Defendants' use of the PAPILLON GRAND
28 CANYON HELICOPTERS mark is for low-cost souvenir products, such as bumper

1 stickers, calendars, identification tags, letter openers, maps, paper coasters, pencils, pens,
2 photographic slides, post cards, posters, travel books and clothing (“Souvenirs”).

3 24. Upon information and belief, Defendants sell their Souvenirs solely through
4 their own gift shops.

5 25. Upon information and belief, consumers will not be confused by CityCenter
6 Land’s use of the PAPILLON mark for a retail store at The Crystals featuring high-end
7 designer brand handbags, wallets, belts, scarves, jewelry, hats, and gloves with expected
8 prices primarily ranging from hundreds of dollars to thousands of dollars per item, and
9 Defendants’ use of any PAPILLON formative mark for inexpensive souvenirs sold solely
10 through Defendants’ gift shops and for the purpose of promoting Defendants’ helicopter
11 tour services.

12 **COUNT ONE**
13 **(Declaratory Judgment**
14 **under 28 U.S.C. § 2201)**

15 26. CityCenter Land incorporates the allegations set forth in each of the
16 preceding paragraphs as if fully set forth herein.

17 27. An actual case and controversy exists between CityCenter Land and
18 Defendants.

19 28. There is an adversarial conflict between CityCenter Land and Defendants.

20 29. CityCenter Land has a reasonable apprehension of litigation.

21 30. This controversy is ripe for adjudication.

22 **COUNT TWO**
23 **(Misrepresentation)**

24 31. CityCenter Land incorporates the allegations set forth in each of the
25 preceding paragraphs as if fully set forth herein.

26 32. Defendants intentionally made the false representations of material fact to
27 CityCenter Land to induce CityCenter Land to cease use of the PAPILLON mark.

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1 33. CityCenter Land reasonably relied on Defendants’ false representations of
2 material fact to its detriment.

3 34. CityCenter Land suffered damages as the direct and proximate result of
4 Defendants’ fraud.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, CityCenter Land respectfully requests that the Court:

7 A. Enter a declaratory judgment that CityCenter Land has not infringed or
8 otherwise violated any rights of Defendants arising from or relating to CityCenter Land’s
9 use of the PAPILLON mark.

10 B. Award damages to CityCenter Land in an amount to be proven at trial.

11 DATED this 29th day of October, 2009.

12 LEWIS AND ROCA LLP

13
14 /s/
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