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6 Attorneys for PLAINTIFF  
7 CULINARY WORKERS UNION, LOCAL 226  
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10 **UNITED STATES DISTRICT COURT**  
11 **DISTRICT OF NEVADA**

12 CULINARY WORKERS' UNION, LOCAL  
226,

13  
14 Plaintiff,

15 v.

16 CESAR BARSEY, an individual, & TEAM  
CESAR, a Nevada company, and DOES 1-5,  
17 Defendants.  
18

CASE NO.

**VERIFIED COMPLAINT FOR  
VIOLATION OF THE FEDERAL ANTI-  
CYBERSQUATTING CONSUMER  
PROTECTION ACT, 15 U.S.C. § 1125(d);  
TRADEMARK INFRINGEMENT UNDER  
SECTION 1125 OF THE LANHAM ACT,  
15 U.S.C. § 1125(a); AND TRADEMARK  
INFRINGEMENT UNDER N.R.S. 600.435**

**PLAINTIFF DEMANDS TRIAL BY  
JURY**

19  
20  
21  
22 COMES NOW Plaintiff Culinary Workers' Union, Local 226 ("Plaintiff") and alleges as  
23 follows:  
24

25 **I. PARTIES**

26 1. Plaintiff Culinary Workers Union, Local 226 is an unincorporated association  
27 having its principal offices at 1630 S. Commerce Street, in the City of Las Vegas, County of  
28 Clark, State of Nevada, 89102, and is a labor organization representing employees in industries

1 affecting commerce within the meaning of the National Labor Relations Act, 29 U.S.C. § 141 *et*  
2 *seq.*, and the Labor Management Relations Act (“LMRA”), 29 U.S.C. § 152(5).

3 Plaintiff is informed and believes that Defendant Team Cesar is a Nevada company with its  
4 principal place of business at 8039 Skywall Court, Las Vegas, Nevada 89123, and that Team  
5 Cesar is an assumed name of its sole owner, Cesar Barsey. Defendant Team Cesar has engaged  
6 in actions in Nevada which confer jurisdiction over it. (*See* Complaint, Exhibit A, attaching  
7 Whois Search Results from Omnis Network for the domain names [www.culinaryunion226.com](http://www.culinaryunion226.com),  
8 [www.culinaryunion226.net](http://www.culinaryunion226.net), and [www.culinaryunion226.us](http://www.culinaryunion226.us)).

9 2. Plaintiff is informed and believes that Defendant Cesar Barsey (“Barsey”) is the  
10 administrative contact, technical contact, billing contact, and owner and operator of Defendant  
11 Team Cesar, and is in direct control of its activities. Defendant Barsey has engaged in actions in  
12 Nevada which confer personal jurisdiction over him. (*See* Complaint, Exhibit A.)

13 3. Plaintiff is ignorant of the true names or capacities of the Defendants sued here  
14 under the fictitious names Does 1-5 inclusive. Plaintiff will amend this complaint to add true  
15 names and capacities of these parties when they have become known to Plaintiff.

16 4. Plaintiff is informed and believes, and on this basis, alleges, that each Defendant  
17 was at all pertinent times the agents of the other, and that each and every act alleged here as  
18 performed by one or all of them was performed as the agent of the other defendants, and each  
19 defendant acted and performed within the scope and authority of such agency relationship.  
20 Plaintiff further alleges that there exists and existed at all times pertinent here a unity of interest  
21 and ownership among Defendants, such that any individuality and separateness of any and all  
22 businesses and individual defendants has ceased.

## 23 **II. JURISDICTION & VENUE**

24 5. This action is brought for violation of the Anti-Cybersquatting Consumer  
25 Protection Act, 15 U.S.C. § 1125(d); violation of the Lanham Act, 15 U.S.C. § 1125(a); and  
26 violation of the Nevada Revised Statutes, N.R.S. 600.435. This Court has jurisdiction over the  
27 federal claims pursuant to 28 U.S.C. § 1331, 15 U.S.C. § 1121, and 28 U.S.C. § 1338(a).



1 function in providing services to workers, the Union also engages in some political activities. It  
2 uses its name to endorse candidates for political office and encourages volunteers to participate  
3 in political campaigns. It is well-known for its ability to influence voters. Its endorsement has  
4 been characterized by national media as valuable to candidates running for political office in  
5 Nevada, including presidential candidates. (See Maura Reynolds, “Unions bitterly divided in  
6 race,” LOS ANGELES TIMES, January 13, 2008 (describing “legendary” ability of Culinary Union  
7 to “organize and deliver votes”) (attached hereto as Exhibit C); Jay Carney, “Hillary wins  
8 Nevada,” TIME, Jan. 19, 2008 at 1 (describing Plaintiff’s endorsement as “coveted” in national  
9 presidential election) (attached hereto as Exhibit D); Jennifer Steinhauer, “Vegas Union Leans  
10 to Obama,” NEW YORK TIMES Caucus, Jan. 8, 2008 (describing Plaintiff’s endorsement as “by  
11 far the most coveted get in Nevada” for Democratic presidential candidates) (attached hereto as  
12 Exhibit E).)

13 10. Plaintiff’s trade name and service mark appears nearly daily in local newspapers  
14 and other media in Las Vegas, and in national media. (See, e.g., Associated Press, “Union helps  
15 open doors to home ownership in Vegas,” LAS VEGAS SUN, February 13, 2010 (attached hereto  
16 as Exhibit F); see also Ex. C-E.) As a result, the Union is well-known in Nevada and nationally  
17 by members of the general public.

18 11. By virtue of the goodwill and reputation associated with Plaintiff’s trade name  
19 and service mark, and Plaintiff’s extensive and long-standing use of its trade name and service  
20 mark, Plaintiff’s name has developed exceptionally strong secondary meaning and significance  
21 in the minds of the public.

22 12. No other person or firm operates the same or similar type of organization in the  
23 State of Nevada under the same or similar trade names. The general public associates the names  
24 Culinary Workers Union Local 226, Culinary Workers Union 226, Culinary Workers Union,  
25 Culinary Union, and Culinary Union 226 as signifying Plaintiff’s specific organization.

26 13. Plaintiff has engaged in extensive campaigning in connection with its name, and  
27 has expended significant resources to develop goodwill in its name. As a result, Plaintiff’s name  
28 is an extremely valuable asset.

1           14. Plaintiff owns and uses the domain name <www.culinaryunion226.org>,  
2 incorporating its distinctive name, to promote its services and disseminate information regarding  
3 its services and political activities. (See Exhibit G (landing page for  
4 www.culinaryunion226.org).)

5           15. On November 8, 2009, Defendants registered the domain names  
6 <www.culinaryunion226.com>, <www.culinaryunion226.net>, and  
7 <www.culinaryunion226.us>. (See Exhibit A.) Each of the three domain names incorporates  
8 Plaintiff's distinctive name, Culinary Union 226. The suffix attached to a domain name is  
9 referred to as a top-level domain name. Disregarding the top-level domain name, each domain  
10 name is identical to Plaintiff's domain name, <www.culinaryunion226.org>, with only the  
11 <.com>, <.net>, and <.us> endings differentiating it from Plaintiff's <.org> website. The  
12 domain names are confusingly similar to Plaintiff's distinctive service mark and trade name.

13           16. Since November 8, 2009, Defendants have continued to use the three domain  
14 names. These domain names take the user to three identical but separate websites. (See Exhibit  
15 H (landing screens – the part of the page visible when a user first lands on the website – for  
16 <www.culinaryunion226.com>, <www.culinaryunion226.net>, and  
17 <www.culinaryunion226.us>).) The Defendants' websites make reference to Plaintiff and  
18 indicate that Defendants were fully aware that the domain names used for their websites closely  
19 resembled that of Plaintiff's website.

20           17. It is not evident from the landing screens of the three websites that they are not  
21 sponsored by or affiliated with Plaintiff. The landing screen of each website does not contain  
22 any sort of disclaimer. Instead, each website shows a depiction of an American flag, features  
23 the headline "LOCAL 226/ HEAR US," and features a box with the words "Listen to the  
24 People." (See Ex. H.) The websites create a first impression that they are sponsored by or  
25 affiliated with Plaintiff. The three websites all contain multiple advertisements for various  
26 products, indicating that the sites are being used for commercial gain. If a user scrolls down, it  
27 will see a video featuring union workers and President Barack Obama speaking to Plaintiff's  
28 members, followed by an invitation to comment on the union.

1 18. Defendants' domain names were calculated to mislead the public into believing  
2 the Defendants' sites were operated by Plaintiff.

3 19. The Union has priority of use and superior trademark rights in the names Culinary  
4 Workers Union Local 226, Culinary Workers Union 226, Culinary Workers Union, Culinary  
5 Union, and Culinary Union 226.

6 20. Defendants' use of the Union's trade name and service mark in its domain name  
7 and on its websites is likely to cause confusion or mistake or deception in violation of the  
8 federal and state laws prohibiting trademark infringement and cybersquatting.

9 21. On January 25, 2010, the Union, through its counsel, sent a letter via UPS  
10 informing Defendants of its exclusive rights in its trade name and service mark and requested  
11 that Defendants immediately cease and desist from their acts of trademark infringement and  
12 cybersquatting. (See Exhibit I.) Although a letter sent January 14, 2010, via certified mail was  
13 returned because it was not picked up at the post office, the January 25, 2010 letter was not  
14 returned. Plaintiff is therefore informed and believes that Defendants received notice of  
15 Plaintiff's request to cease and desist their use of the websites. To date, Defendants have not  
16 complied with Plaintiff's request to cease and desist.

17 22. Defendants' unauthorized use of Plaintiff's trade name and service mark is  
18 damaging the rights of Plaintiff, is being done deliberately in bad faith, and with full knowledge  
19 that the Plaintiff is being damaged thereby.

20 **IV. COUNT I – 15 U.S.C. § 1125(d) – FEDERAL ANTI-CYBERSQUATTING ACT**

21 23. Plaintiff hereby incorporates by reference each and every allegation in Paragraphs  
22 1-22 above as if fully set forth herein.

23 24. Defendants' have registered and used the domain names  
24 <www.culinaryunion226.com>, <www.culinaryunion226.net>, and  
25 <www.culinaryunion226.us>, which are identical or confusingly similar to Plaintiff's distinctive  
26 and famous mark.

27 25. Defendants' registration and use of the domain  
28 names<www.culinaryunion226.com>, <www.culinaryunion226.net>, and

1 <www.culinaryunion226.us> is being done with full knowledge of Plaintiff's prior rights in their  
2 trade name and service mark, and with a bad faith intent to profit from a domain name that is  
3 identical or confusingly similar to a distinctive mark, and dilutive to a famous mark, and to  
4 divert users for commercial gain.

5 26. Defendants' domain names consist solely of a name which is commonly used to  
6 identify Plaintiff. Defendants have made no prior use of the domain names in connection with a  
7 bona fide offering of goods or services. Defendants' extensive use of advertising on the  
8 websites for which it is using the domain names demonstrates conclusively that it is not making  
9 a bona fide noncommercial fair use of the site. Defendants intend to divert users from Plaintiff's  
10 online location to a site that could harm Plaintiff's goodwill by creating a likelihood of  
11 confusion as to the source, sponsorship, affiliation, or endorsement of the site or its advertisers.  
12 Defendants acquired three identical domain names which are all identical or confusingly similar  
13 to Plaintiff's marks, and dilutive of Plaintiff's famous marks at the time of the registration of the  
14 domain names.

15 27. Defendants' actions constitute a willful violation of the Anti-Cybersquatting Act,  
16 entitling Plaintiff to relief.

17 WHEREFORE, Plaintiff prays as set forth below.

18 **V. COUNT II – 15 U.S.C. § 1125 – FEDERAL TRADEMARK INFRINGEMENT**

19 28. Plaintiff incorporates by reference each and every allegation in Paragraphs 1-27  
20 above as if fully set forth herein.

21 29. Defendants' registration and use in commerce of the domain names  
22 <www.culinaryunion226.com>, <www.culinaryunion226.net>, and  
23 <www.culinaryunion226.us>, have a tendency to confuse consumers into believing that some or  
24 all the websites originate with or are affiliated with Plaintiff, or are approved by Plaintiff, or are  
25 otherwise associated with Plaintiff.

26 30. Plaintiff has acquired distinctiveness in its name. Defendants' commencement of  
27 the use of the three domain names in commerce is likely to cause dilution by blurring or  
28

1 tarnishment of Plaintiff's famous mark. Defendants' activities are likely to injure Plaintiff's  
2 reputation and to dilute the distinctive quality of its trade name and service mark.

3 31. Defendants' activities in operating three websites for commercial gain which  
4 extensively use and promote Plaintiff's trade name and service mark creates a likelihood of  
5 confusion in violation of section 1125 of the Lanham Act, 15 U.S.C. § 1125.

6 32. Such infringement is causing damage to Plaintiff.

7 33. Having been notified of Plaintiff's rights in the trade name and service mark,  
8 Defendants' ongoing infringement is willful and deliberate.

9 34. This willful infringement by Defendants will continue unless enjoined by this  
10 Court.

11 WHEREFORE, Plaintiff prays as set forth below.

12 **VI. COUNT III – TRADEMARK INFRINGEMENT UNDER NRS 600.435**

13 35. Plaintiff incorporates by reference each and every allegation in Paragraphs 1-34  
14 above as if fully set forth herein.

15 36. Plaintiff's name is used to identify its services and is used in the advertising of  
16 services to distinguish it from the services of others.

17 37. Plaintiff uses its name in the advertising of services rendered in the State of  
18 Nevada, its name is famous in the State of Nevada, and it is the lawful owner of the mark that is  
19 famous in the State of Nevada.

20 38. Plaintiff's name and mark have acquired distinctiveness. Plaintiff has used the  
21 name and mark since the 1940s. It has used it in advertising, promotions and endorsements  
22 throughout the State of Nevada and nationally. It is highly recognizable by the general public in  
23 the State of Nevada, and the same or similar mark is not used by other person or entity in the  
24 State.

25 39. Defendants have used, primarily for profit, without the consent of Plaintiff,  
26 Plaintiff's name and mark, causing dilution of the mark.

27 40. Defendants' use of Plaintiff's trade name and service mark is likely to dilute the  
28 distinctive quality of the trade name and service mark in violation of NRS 600.435.





1           2.     I have read the foregoing Verified Complaint and know the contents thereof and  
2 the same are true to my knowledge, except those matters therein which are stated to be alleged  
3 upon information and belief, and as to those matters, I believe them to be true.  
4

5 I verify under penalty of perjury under the laws of the United States of America and the State of  
6 Nevada that the foregoing is true and correct. Executed on February 26, 2010.  
7

8   
9 \_\_\_\_\_  
10 Ken Liu, Research Director  
11 Culinary Workers Union Local 226

12           *March 2*  
13 DATED: FEBRUARY \_\_, 2010

14 Respectfully submitted,

15 **MCCRACKEN, STEMERMAN & HOLSBERY, LLP**

16 BY:   
17 \_\_\_\_\_  
18 Eric B. Myers

19 Attorneys for PLAINTIFF CULINARY  
20 WORKERS' UNION, LOCAL 226  
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**CERTIFICATE OF INTERESTED PARTIES**  
**REQUIRED BY LOCAL RULE 5004**

The undersigned, counsel of record for Plaintiff Culinary Workers Union Local 226, certifies that there are no known interested parties.

Dated: March 2, 2010

  
\_\_\_\_\_  
Eric B. Myers

Attorney of Record for Plaintiff Culinary  
Workers' Union, Local 226

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