

Matthew A. Taylor
DUANE MORRIS LLP
30 South 17th Street
Philadelphia, Pennsylvania 19103
Tel.: (215) 979-1000
Email: mataylor@duanemorris.com

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Evangelos Michailidis
Ralph Carter
DUANE MORRIS LLP
1540 Broadway
New York, New York 10036
Tel.: (212) 692-1000
Email: emichailidis@duanemorris.com
rcarter@duanemorris.com

Attorneys for Plaintiff
Red Lion Hotels Corporation

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RED LION HOTELS CORPORATION,

Plaintiff,

v.

HARD ROCK CAFE INTERNATIONAL
(USA), INC.,

Defendant.

Civil Action No. _____

COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Red Lion Hotels Corporation (“Red Lion”), for its Complaint against Defendant Hard Rock Cafe International (USA), Inc. (“Hard Rock”), alleges as follows:

INTRODUCTION

1. This is an arresting case of trade dress infringement, injury to business reputation, and unfair competition. Starting in October 2014, Plaintiff Red Lion launched a new, national,

upscale hotel brand — Hotel RL — aimed at the millennial mindset traveler seeking to blend work and play in a relaxed, communal atmosphere.

2. Consciously evoking Red Lion’s Pacific Northwest heritage, Hotel RL’s interior design is a thoughtful, inspired combination of signature elements that create, in every Hotel RL lobby, the atmosphere and vibe of a modern Pacific Northwest coffeehouse. These signature design elements include:

- A prominent and centrally featured lobby coffee bar, where guests are invited to a free cup of high-quality coffee served by trained baristas;
- The Living Stage, a dedicated lobby performance area where local artists, musicians, activists, civic leaders, and engaged citizens can showcase their projects and points of view — just like in a coffeehouse;
- The Steps, a communal, stadium-like seating area across from The Living Stage, where hotel guests and visitors can relax with their cup of coffee, plug in and work on their laptop, or take in a Living Stage performance; and
- A tech-savvy, forward-thinking front-desk experience, replacing the traditional across-the-counter room check-in process with a flexible approach that allows guests, if they desire, to bypass reception and check in via self-service kiosks or directly from their mobile devices.

3. Hotel RL’s signature elements are used consistently throughout each of the seven Hotel RL locations currently open across the country — from Baltimore on the East Coast to Spokane in Washington State and points in between — to create a unique and distinct hotel experience, differentiated from a sterile and commoditized hotel chain. As shown below, in the more than two years since Hotel RL’s public launch, hotel travelers and property owners have come to associate Hotel RL’s signature design elements with Red Lion and Hotel RL.

4. Defendant Hard Rock’s recent public launch of its own “Reverb” brand — at the 39th Annual NYU International Hospitality Industry Investment Conference, in New York City — therefore came to Red Lion as a disturbing shock. With Reverb, Hard Rock is (a) targeting

the same demographic and market as Hotel RL, *i.e.*, millennial mindset travelers comfortable with an upscale three-star experience and (b) replicating Hotel RL's internal industry model, *i.e.*, enticing owners of properties in desirable urban locations to convert to a more modern hotel design. But most egregiously, Hard Rock has also copied each of Hotel RL's core signature elements, even going so far as to also call them "Signature Elements." The copying is remarkable — and unmistakable:

- Hotel RL's prominent lobby coffee bar has become Reverb's "Constant Grind Coffee/Bar," a "barista café by day and bar at night";
- The Living Stage at the Hotel RL has become "The Stage" at the Reverb, and is described by Hard Rock as a "live entertainment zone [that] features local artists sharing their latest songs, poetry and books" — exactly the role played at the Hotel RL;
- The Steps at the Hotel RL have become Reverb's "Communal Steps," but are identical in form, function, and lobby location to Hotel RL's; and
- Hotel RL's tech-savvy check-in experience is now Reverb's "Fly-By Check-in," where guests can "bypass the desk and go straight to their rooms" or use "self or assisted check-in pods."

5. Because Hard Rock's activities infringe on Hotel RL's distinctive trade dress in its interior design, and threaten to irreparably erode and destroy the uniqueness of the Hotel RL brand, Red Lion brings this suit for trade dress infringement, injury to business reputation/dilution, and unfair competition, seeking to enjoin Hard Rock from continuing to use and market the trade dress it explicitly copied from Hotel RL, and to recover appropriate damages.

THE PARTIES

6. Plaintiff Red Lion is a corporation formed and existing under the laws of the State of Washington, with its principal place of business at 201 W. North River Drive, Suite 100, Spokane, Washington.

7. Red Lion, with roots in the Pacific Northwest, has emerged as one of the country's leading hospitality and leisure companies. It is primarily engaged in the franchising, management, and ownership of hotels operating under Red Lion's proprietary brands, including the upscale Hotel RL brand that is the subject of this dispute. Red Lion currently operates, manages or franchises over 1,100 hotel locations in forty-seven states and five countries outside the United States.

8. Red Lion announced the launch of Hotel RL in October 2014 and opened its first Hotel RL-branded property in August 2015, in downtown Baltimore's Inner Harbor area. Since that time, six other Hotel RL properties have opened across the United States. Currently, Red Lion owns, manages, or franchises Hotel RL properties in seven locations:

Hotel RL Baltimore
Hotel RL Washington DC
Hotel RL Olympia
Hotel RL Spokane (at the Park)
Hotel RL Salt Lake City
Hotel RL Brooklyn
Hotel RL Omaha

And Red Lion currently plans to launch twenty to thirty additional Hotel RL properties in fifteen to twenty-five states by the end of 2020.

9. On information and belief, based on searches of public corporate records and databases, Defendant Hard Rock is a corporation formed and existing under the laws of the State of Florida, with a principal place of business at 6100 Old Park Lane, Orlando, Florida 32835.

10. On information and belief, Hard Rock Hotels is an unincorporated business division within Defendant Hard Rock, responsible for operating hotels under brands such as Hard Rock Hotels, Hard Rock Casino, and Hard Rock Hotel & Casino.

11. Hard Rock is well-acquainted with principles of trade dress in the hospitality industry, and should have known better than to steal Plaintiff's. Indeed, in prior litigation against the Planet Hollywood restaurant chain, Defendant Hard Rock claimed trade dress protection over the interior decor and design of its Hard Rock restaurants, describing the protected "overall motif" of its restaurants as composed of the following distinctive combination of elements:

a casual restaurant and bar featuring American cuisine, entertainment memorabilia displayed in a museum or gallery-like format, music played at a very high volume, a retail sales area offering souvenir merchandise bearing the Hard Rock logo, and a decor consisting of high vaulted ceilings that are hand-painted to have sky or night time effects, multiple floor levels, and dark wood accentuated by brass accessories

Morton v. Rank America, Inc., 812 F. Supp. 1062, 1068 (C.D. Cal. 1993) (denying Planet Hollywood's motion to dismiss, which contended that Hard Rock had not sufficiently identified protectable trade dress).

12. This past month, executives and employees of Hard Rock, including Marco Roca, the Chief Development Officer and Executive Vice President for Hard Rock Hotels, participated in the 39th Annual NYU International Hospitality Industry Conference, organized by NYU's Jonathan M. Tisch Center for Hospitality and Tourism and held June 4-6, 2017 at the New York Marriott Marquis in Times Square. At this NYU conference, Roca publicly announced Hard Rock's new "Reverb by Hard Rock" brand, which has now precipitated this lawsuit.

JURISDICTION AND VENUE

13. This is an action for injunctive relief and damages for trade dress infringement under the Trademark Act of 1946, 15 U.S.C. §§ 1051 *et seq.*, as amended by the Trademark

Counterfeiting Act of 1984, Pub. L. 98-473 (the “Lanham Act”), as well as for the state-law torts of unfair competition and injury to business reputation/dilution.

14. Because this action concerns claims under the trademark law of the United States, this Court has original subject-matter jurisdiction under 28 U.S.C. § 1331 (providing for original jurisdiction in federal-question cases), 28 U.S.C. § 1338(a) (providing for original jurisdiction over civil actions arising under any Act of Congress relating to trademarks), and 15 U.S.C. § 1121(a) (providing for original jurisdiction over civil actions arising under the trademarks chapter of Title 15 of the United States Code).

15. This Court also has original subject-matter jurisdiction over Red Lion’s claim for unfair competition under 28 U.S.C. § 1338(b) because that claim is joined in this case with a substantial and related claim under the Lanham Act.

16. This Court may exercise supplemental subject-matter jurisdiction under 28 U.S.C. § 1367(a) over Red Lion’s state-law claims because they are so related to the Lanham Act claim in this action that they form part of the same case or controversy under Article III of the United States Constitution.

17. This Court has personal jurisdiction over Defendant Hard Rock, consistent with constitutional due process and the New York long-arm statute, N.Y. C.P.L.R. §§ 302(a)(1) and 302(a)(2), because Hard Rock both transacted business within New York and committed the tortious acts of trade-dress infringement, unfair competition, and injury to business reputation in New York, including by virtue of its public marketing of the infringing “Reverb by Hard Rock” hotel brand at the 39th Annual NYU International Hospitality Industry Investment Conference at the New York Marriott Marquis in New York City.

18. Venue is proper in this District under 28 U.S.C. § 1391 because, by virtue of Defendant Hard Rock's aforementioned public marketing of the infringing "Reverb by Hard Rock" hotel brand in Manhattan, a substantial part of the events giving rise to Red Lion's claim occurred in this District and Defendant Hard Rock is subject to the Court's personal jurisdiction with respect to Red Lion's claims in this District.

FACTUAL BACKGROUND

19. Red Lion is a hospitality company with deep roots in the Pacific Northwest, going back to 1937 with hotel developers in the region. Over the years, and through several corporate transformations, Red Lion has come to own, franchise, and manage a family of hotel brands including Red Lion Hotels, Red Lion Inns & Suites, GuestHouse, Settle Inn & Suites, 3 Palms Hotels & Resorts, America's Best Inns & Suites, Americas Best Value Inn, Canadas Best Value Inn, Country Hearth Inns & Suites, Jameson Inn, Lexington Hotels & Inns, Signature Inn, and Value Inn Worldwide.

20. Each of Red Lion's brands strives to highlight friendly service, introduce new and delightful experiences to ever-savvy hotel guests, and stay on the cutting edge of technology. Launched in October 2014, Hotel RL is Red Lion's new guest experience.

A. Red Lion's Hotel RL Brand

21. The story of Hotel RL begins in a car, in late 2013, as two hotel industry veterans and innovators, Greg Mount (now Red Lion's President and CEO) and Bill Linehan (now Red Lion's Executive Vice President and Chief Marketing Officer) batted ideas back and forth while driving to a property in Atlanta. Mount and Linehan had spent several years together in the mid-2000s at Starwood Hotels & Resorts, where they had helped launched the distinctive W Hotels luxury brand. Now, sitting in that car, both had an opportunity to join Red Lion, a brand proud

of its Pacific Northwest heritage but looking to accelerate down the road into the modern hotel landscape.

22. As Linehan recalled two years later, in an interview with *Hospitality Design* magazine, talk about Red Lion turned to talk about the distinctive culture and ethos of the Pacific Northwest, which flowed organically into a discussion of values like community, warmth, civic-mindedness, authenticity, and, inevitably, the coffeehouse vibe. Those concepts became the opening chapters in the Hotel RL brand story — creating an “authentic, coffeehouse type” atmosphere in a “3-Star independent boutique-feeling” hotel setting:

We recognized that lifestyle brands tend to exist in upper-upscale and luxury new-builds, and there was an opportunity in the 3-Star conversion space, something that was more relevant with today’s lifestyle generation shift—a high touch, authentic, coffeehouse type feel... There wasn’t a good 3-Star independent boutique-feeling alternative.¹

23. After Mount and Linehan joined Red Lion, in January and February 2014 respectively, they immediately turned to the task of transforming their vision of Hotel RL into something concrete, translating the “coffeehouse type feel” into bricks, mortar, and, of course, coffee.

24. To help implement the vision and define the brand, Red Lion hired The Gettys Group (“Gettys”) out of Chicago, an internationally recognized hospitality design firm with a collection of architects, interior designers, procurement specialists, and branding experts.²

25. In April 2014, Gettys was first brought on board to assist with creating the narrative and imagery around the Hotel RL brand concept, and to fit out a test location in

¹ Stacy Shoemaker Rauhen, “Perspectives Brand Identity: Hotel RL. Rule Benders. Industry veterans rethink the 3-Star hotel,” *Hospitality Design*, Jan./Feb. 2016, http://www.gettys.com/wp-content/uploads/2016/05/Hospitality-Design_Jan_Feb-2016.pdf (last visited July 12, 2017).

² The Gettys Group, <http://www.gettys.com/> (last visited July 12, 2017).

Atlanta. Subsequently, in January 2015, after Red Lion had publicly announced the launch of Hotel RL, Gettys was retained again to assist in the conversion of three hotel properties, Salt Lake City, Spokane, and Olympia, to the Hotel RL design.

26. During the course of these projects, many of Mount's and Linehan's interactions with Gettys about the Hotel RL brand and design elements were with Ron Swidler, the principal in charge of Gettys' Branding Group. Linehan and Mount specifically discussed with Swidler the signature elements that would make the Hotel RL brand stand out in a commoditized and sterile hotel marketplace, as explained further below.

B. Distinctive Design Features of the Hotel RL Brand

27. The essential character of the Hotel RL brand is captured succinctly in Red Lion's public description of the hotel franchise: "This upscale lifestyle brand is a full-service, conversion brand that is targeted for the top 80 U.S. urban markets inspired by the spirit of the Pacific Northwest and designed for consumers with a millennial mindset."³

28. Hotel RL's "Brand Snapshot" brochure, attached hereto as Exhibit 1, elaborates on the atmosphere: "Laid back, creative and welcoming, Hotel RL is a place where business and leisure travelers can stay productive, inspired and comfortable. It's a space that is part coffee shop, part urban lodge, part local hangout, and 100% unique." And, as part of the October 2014 brand launch, President and CEO Greg Mount amplified the description of this consciously crafted and curated design:

"By tapping into the millennial mindset, Hotel RL offers a fresh approach to hospitality that will resonate with the most influential market set since the baby boomers. . . . Hotel RL stresses authenticity, environment and community, and reflects a longstanding commitment by Red Lion to hospitality, starting with a simple hello. . . . The focal-point of our open pavilion-style lobby

³ See Red Lion Hotels Corp. Form 10-K Annual Report for the Period Ending Dec. 31, 2016, at p. 2.

is The Steps, a new gathering and seating concept where guests can enjoy an espresso and complimentary Wi-Fi in the mornings or a signature cocktail in the evenings. . . . Through design and guest experiences, Hotel RL brings the Pacific Northwest ethos of exploration and discovery to life in the three-star hotel segment. . . . Hotel RL will be the unique differentiator in markets that currently are saturated with homogenized hotel rooms. After all, unique experiences are the hallmark of the millennial mindset. As a new brand, Hotel RL has no proximity issues. We believe having the freshness of a new brand in a singular niche will give our franchisees a competitive advantage in attracting and retaining guests.”⁴

29. Integral to making the desired Hotel RL atmosphere tangible was a series of distinct, coordinated, and consciously selected “signature elements,” presented in detail below, including a prominent coffee bar to act as a fulcrum for the lobby for the comings and goings of guests and locals; The Steps, the stadium-like seating concept Mount mentioned in his brand launch statement; The Living Stage, a forum for local artists, activists, writers, and musicians to present and perform; and a technologically forward-thinking check-in and room-assignment process, relying on self-service kiosks or iPad check-ins. The combination of these interlocking design elements, explicitly geared toward travelers with a millennial mindset, is unique and distinctive in the hotel environment.

30. Another important aspect of the Hotel RL brand is its primary positioning as a conversion or adaptive reuse brand, *i.e.*, attractive to existing owners who are looking to freshen or modernize their properties or adapt them toward a more millennial-mindset focus. As Greg Mount explained in his launch statement, Hotel RL presents ““an opportunity for hotel owners to

⁴ Multimedia Release, Red Lion Hotels Corp., “RLHC Launches New Upscale Lifestyle Brand, Hotel RL,” Oct. 21, 2014, <http://investor.shareholder.com/rlhcorp/releasedetail.cfm?ReleaseID=877349> (last visited July 12, 2017)

affiliate with a new brand that isn't already commoditized in every major market.”⁵ The Hotel RL brand is “ideally suited for quality conversions or adaptive reuse” in “[v]ibrant business districts.” Exhibit 1 at 1.

31. Each of the distinctive design elements interwoven to form the Hotel RL brand is explained further below.

1. The Prominent Lobby Coffee Bar

32. Because the coffeehouse atmosphere is the backbone of the Hotel RL brand's DNA, the public lobby of each branded property is activated through a prominent coffee bar, where guests are treated to a free cup of award-winning drip coffee or espresso from Seattle-based Victrola Coffee Roasters, poured by trained and engaged baristas. As President and CEO Greg Mount explained at the Hotel RL brand launch announcement, one of the “signature elements of the Hotel RL brand” will be “distinctive coffee service in the lobbies, centered around the notion of enticing guests out of their rooms and into a Pacific Northwest coffee house setting.”⁶

33. Even two years later, as part of a National Coffee Day 2016 announcement, Mount was still stressing this signature theme: “Every day is Coffee Day at Hotel RL, where even the lobby is designed to evoke a coffee shop.” This is because the Hotel RL brand

reflects its Pacific Northwest roots by serving up the Seattle-based coffee brand Victrola Coffee Roasters at all of its properties. Hotel RL has removed coffee makers from each guest room to ensure guests receive the coffee experience they expect from a hotel. . . .

⁵ Multimedia Release, Red Lion Hotels Corp., “RLHC Launches New Upscale Lifestyle Brand, Hotel RL,” Oct. 21, 2014, <http://investor.shareholder.com/rlhcorp/releasedetail.cfm?ReleaseID=877349> (last visited July 12, 2017)

⁶ Multimedia Release, Red Lion Hotels Corp., “RLHC Launches New Upscale Lifestyle Brand, Hotel RL,” Oct. 21, 2014, <http://investor.shareholder.com/rlhcorp/releasedetail.cfm?ReleaseID=877349> (last visited July 12, 2017)

Each Hotel RL property includes a prominent coffee bar within their lobby space with specially trained baristas serving up craft coffee beverages. Guests staying at the hotel receive one complimentary espresso coffee drink or unlimited drip coffee each morning during their stay. . . .

Guests can enjoy their coffee at the hotel’s unique on-property entertainment program, the Living Stage, where creatives, innovators and performers of the neighborhood showcase their ideas.⁷

34. Each of the three exemplar photographs below — from the Hotel RL Baltimore (the very first Hotel RL to open, in August 2015) to the Hotel RL Olympia (opened 2016) to the Hotel RL Brooklyn (recently opened, January 2017) — illustrates the prominence of the coffee bar in the lobby of a Hotel RL-branded property.



(Hotel RL Baltimore)⁸

⁷ Press Release, Red Lion Hotels Corp., “Hotel RL Honors National Coffee Day: Join Us for Award-Winning Grounds,” Sept. 29, 2016, <http://investor.shareholder.com/rlhcorp/releasedetail.cfm?releaseid=991399> (last visited July 12, 2017)

⁸ Image available from the photo gallery at <https://www.redlion.com/baltimore> (last visited July 12, 2017).



(Hotel RL Olympia)⁹



(Hotel RL Brooklyn)¹⁰

35. Media reports picked up on the lobby coffee bar as a signature element of the new Hotel RL brand. For example, in discussing Red Lion’s plans for the Baltimore office building it

⁹ Image available from the photo gallery at <https://www.redlion.com/olympia> (last visited July 12, 2017).

¹⁰ Image available from the photo gallery at <https://www.redlion.com/bed-stuy> (last visited July 12, 2017).

had acquired in December 2014 to convert into the inaugural Hotel RL, Red Lion's hometown newspaper explained that "the hotel will include a Red Lion-designed lobby coffee bar" and "will provide a shot of the 'Pacific Northwest coffee experience.'"¹¹

36. As another example, after the Hotel RL Baltimore's opening, one travel website recommended the hotel in large part because of its coffee-bar-based "un-lobby": "We also loved the concept of the 'un-lobby', a lobby that doesn't look like your typical check-in/check-out zone. The open concept area is billed as a communal work/chill out space as well as coffee bar and restaurant, all rolled into one."¹²

2. The Living Stage

37. Extending the coffeehouse vibe, another interwoven signature element of Hotel RL's activated lobby is The Living Stage, a dedicated public performance area where local community leaders, authors, artists, and musicians can literally take the stage and present their distinct points of view to hotel guests and members of the public — just like one would find in a vibrant urban coffeehouse.

38. Red Lion devotes a specific webpage on its website to The Living Stage, <https://www.redlion.com/hotel-rl-living-stage>, with a calendar of upcoming events and a place where interested individuals can answer casting calls. The website explains The Living Stage in the overall context of the Hotel RL brand and design: "The Hotel RL experience is more than a relaxing room. . . . Craft coffee is always flowing as our lobby buzzes with local talent sharing the spotlight of our Living Stage. The Living Stage, featured at all our Hotel RL locations is a

¹¹ Tom Sowa, "Red Lion purchases Baltimore property for 130-room hotel," *The Spokesman-Review*, Dec. 2, 2014, <http://www.spokesman.com/stories/2014/dec/02/red-lion-purchases-baltimore-property-for-130/> (last visited July 12, 2017).

¹² Jessica Padykula, "48 Hours in Baltimore," *AmongMen*, July 26, 2016, <http://www.amongmen.com/food-travel/48-hour-city-guides/48-hours-baltimore/> (last visited July 12, 2017).

platform for local talent where musicians, poets, authors, public speakers, artists, activists and more can all be found.”¹³ “All of our hotels, from coast to coast, feature The Living Stage where guests and locals gather to enjoy themselves and be inspired.”¹⁴

39. As CEO Greg Mount recently explained in a February 20, 2017 interview with *USA Today*: “One of those things that we did for Red Lion that’s been just a game changer is the living stages. We said, ‘We don’t need a restaurant, we don’t need a bar, we need more of a coffee shop kind of feel with a living stage that’s similar to Ted Talks.’ So we have very relevant local people getting up and talking about things that are important in their lives and in their cities and in their regions. All of this is being digitally recaptured and then recast on our TVs. We’re really trying to bring the town center back into the hotel lobby through the design.”¹⁵

40. The exemplary photos below show The Living Stage at the Hotel RL Olympia, Hotel RL Baltimore, and Hotel RL Omaha.

¹³ <https://www.redlion.com/hotel-rl-living-stage> (last visited July 12, 2017).

¹⁴ *Id.*

¹⁵ Nancy Trejos, “Hotel CEOs talk mergers, branding and booking trends,” *USA Today*, Feb. 20, 2017, <https://www.usatoday.com/story/travel/roadwarriorvoices/2017/02/20/hotel-ceos-mergers-branding-booking/98046690/?csp=travel> (last visited July 12, 2017).



(Hotel RL Olympia)¹⁶

¹⁶ Image available from the photo gallery at <https://www.redlion.com/olympia> (last visited July 12, 2017).



(Hotel RL Baltimore)¹⁷



(Hotel RL Spokane)¹⁸

¹⁷ Image available from the photo gallery at <https://www.redlion.com/baltimore> (last visited July 12, 2017).

¹⁸ Image available from the photo gallery at <https://www.redlion.com/park-spokane> (last visited July 12, 2017).

41. As with the lobby coffee bar, news media reports recognize the central role of The Living Stage as one of the defining signature design elements behind Hotel RL's distinct brand identity. One travel blog noted, in reference to the Hotel RL Baltimore, that "[t]he Hotel RL has also positioned itself as a community space thanks to The Living Stage, a stage from which both locals and hotel guests can experience anything from live performances and author readings, to lectures given by community leaders or local start-ups. It's free and a fun way for visitors to mingle with locals while getting entertained or learning something new."¹⁹

42. Another travel blog, in June 2016, described The Living Stage as one of the "8 Hotel Trends We Love" and explained that "The Living Stage is a key component of the new lifestyle brand Hotel RL, developed by Red Lion Hotels. Open to the general public, the stage is located in or adjacent to the lobby and showcases local musicians and occasionally writers."²⁰

43. Likewise, when the Hotel RL Olympia opened in January 2016, local newspaper coverage noted The Living Stage: "There's a new stage in town offering free entertainment and information several nights a week. It's The Living Stage at Hotel RL Olympia, referred to by most as the Red Lion. The stage, in the hotel's lobby, began hosting events in July and this month offers music, poetry, storytelling and talks about wedding planning and how to make a living in the arts. . . . The Olympia stage is part of a chainwide initiative that began in 2014 in Baltimore, Maryland. The idea is to make the hotel a destination for people in the community, a Red Lion spokeswoman said. The hotel chain is also aiming to spark conversations among

¹⁹ Jessica Padykula, "48 Hours in Baltimore," *AmongMen*, July 26, 2016, <http://www.amongmen.com/food-travel/48-hour-city-guides/48-hours-baltimore/> (last visited July 12, 2017).

²⁰ Laura Powell, "8 Hotel Trends We Love," *Shermans Travel* blog, June 7, 2016, <https://blog.shermanstravel.com/2016/8-hotel-trends-we-love/> (last visited July 12, 2017).

community members and hotel guests. Many of the talks are reminiscent of something you might see at a TED (Technology Entertainment Design) event”²¹

44. When the Hotel RL Spokane opened in August 2016, The Living Steps received similar coverage from the local paper: “The heart of the new look is what the Spokane-based hospitality company calls its ‘Living Stage,’ which will feature community speeches and performances.”²²

45. One month later, CEO Greg Mount continued the theme: “‘The Living Stage is not only a brand differentiator, but an industry game-changer It is more than just a stage as it is meant to spark discussion, inspire people to engage and exchange ideas and bring together the thinkers and creatives alike.’”²³

3. The Steps

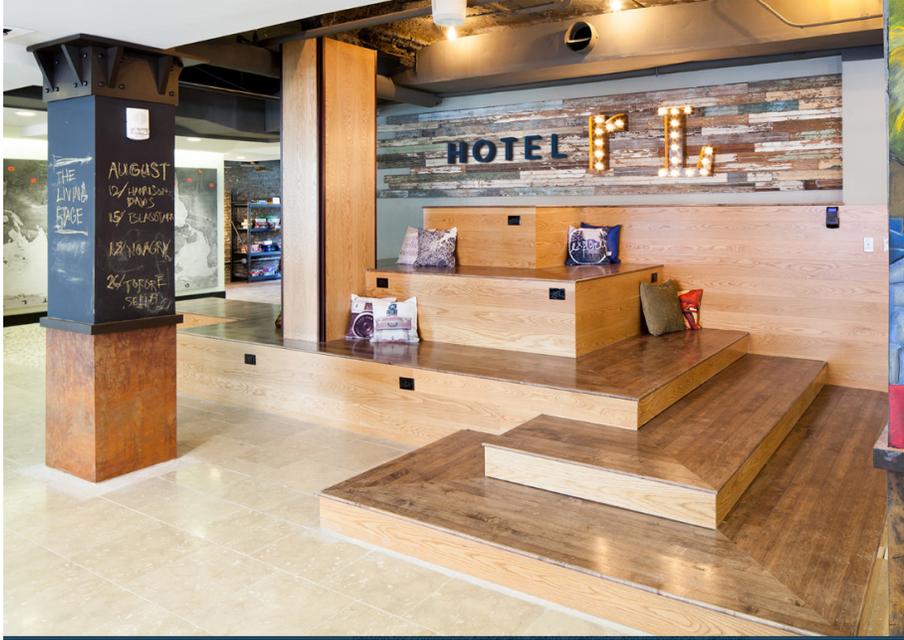
46. Across from The Living Stage in a Hotel RL lobby are The Steps, a signature stadium-like seating arrangement, which can be used as a viewing platform when The Living Stage is being used for performances, or as a relaxed hang-out spot otherwise.

47. The exemplary photos below show The Steps at the Hotel RL Baltimore, the Hotel RL Omaha, and the Hotel RL Spokane:

²¹ Molly Gilmore, “Hotel RL Olympia sets the stage for local performers,” *The Olympian*, Jan. 6, 2017, <http://www.theolympian.com/entertainment/article124551724.html> (last visited July 12, 2017).

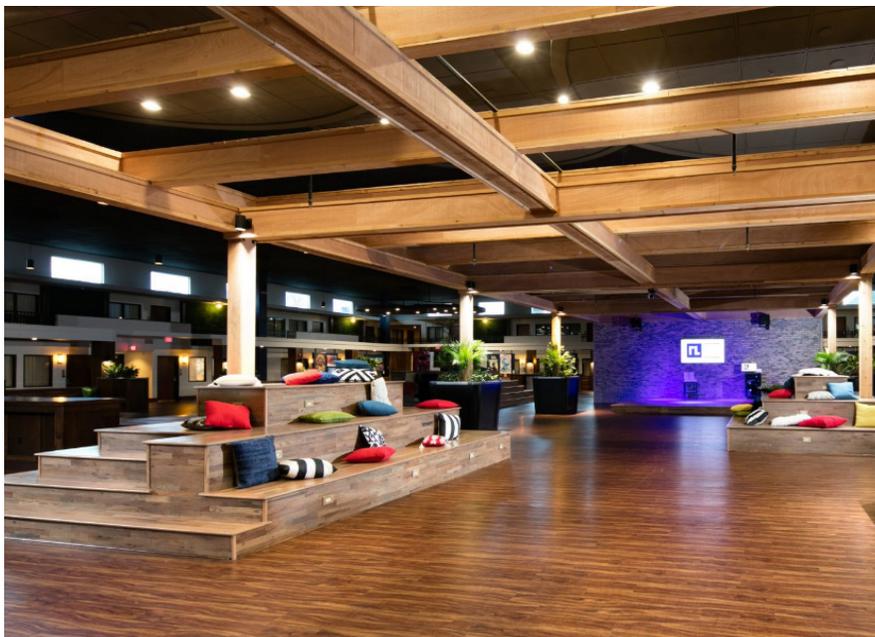
²² Mike Prager, “Community, connectivity part of Hotel RL conversion,” *The Spokesman-Review*, Aug. 26, 2016, <http://www.spokesman.com/stories/2016/aug/26/community-connectivity-part-of-hotel-rl-conversion/> (last visited July 12, 2017).

²³ Press Release, Red Lion Hotels Corp., “RLHC Announces 2016 Fall Living Stage Line Up: Innovative Hotel Brand Connects Travelers and Community Through Local Performance Series at Hotel RL,” Sept. 1, 2016, <http://investor.shareholder.com/rlhcorp/releasedetail.cfm?ReleaseID=987521> (last visited July 12, 2017).

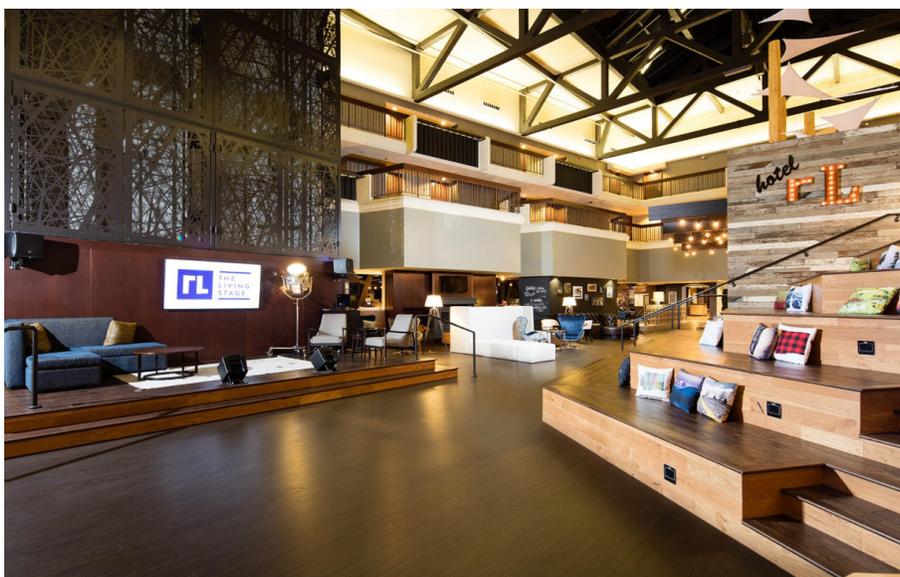


(Hotel RL Baltimore)²⁴

²⁴ Image available from the photo gallery at <https://www.redlion.com/baltimore> (last visited July 12, 2017).



(Hotel RL Omaha)²⁵



(Hotel RL Spokane)²⁶

²⁵ Image available from the photo gallery at <https://www.redlion.com/hotel-rl-omaha> (last visited July 12, 2017).

²⁶ Image available from the photo gallery at <https://www.redlion.com/park-spokane> (last visited July 12, 2017).

48. In a magazine interview conducted shortly after the opening of the Hotel RL Baltimore — posted to Gettys’ website as an example of Gettys’ brand-building consulting track record — a Gettys representative played up The Steps and their connection to The Living Stage: “The architects have built in steps for a seating arrangement, and a living stage that’s a venue for Ted-like Talks, for discussion of ideas and for bands coming through town.”²⁷

49. A subsequent article from the *Hospitality Interiors* website had a similar focus on The Steps (as well as The Living Stage and the Victrola Coffee lobby bar), calling The Steps a “unique design element[]”:

To meet the desire for a more casual, central meeting space, Hotel RL placed special emphasis on its hotel lobby, giving guests a place to plug in to work or unwind with a beverage.

The lobby features unique design elements, including a seating concept called The Steps, which reproduces the feeling of a typical Pacific Northwestern coffee house and serves complimentary espresso to guests by the award-winning Victrola Coffee.

The Steps also serves as a focal point for live entertainment and interactive “TED-like” talks, which will eventually be broadcast to other Hotel RL locations.²⁸

50. The *Hotel Junkie Magazine* website painted a similar picture: “At the lobby’s center is the living Stage and its big wooden ‘bleacher’ style seating. The seating is part sculpture and part hang-out spot. When there’s a reading or performance going on, then it’s

²⁷ “A Baltimore Hotel by The Gettys Group,” *Architects + Artisans*, Aug. 11, 2015, available at http://www.gettys.com/wp-content/uploads/2015/12/01_Architects-Artisans_August-2015.pdf (last visited July 12, 2017).

²⁸ Gemma Ralph, “Hotel RL, Baltimore,” *Hospitality Interiors*, Feb. 5, 2016, <https://www.hospitality-interiors.net/projects/articles/2016/02/2121945441-hotel-rl-baltimore> (last visited July 12, 2017).

definitely the latter. The Living Stage brings in community leaders, artists, and musicians, merging real life with hotel life.”²⁹

51. The *Space Magazine* likewise described The Steps (along with The Living Stage and “Premier coffee services in the lobbies”) as “unique design features that will remain consistent in all Hotel RL locations.” It characterized The Steps as a “new gathering and seating concept for the open pavilion-style lobby where guests can enjoy an espresso and complimentary Wi-Fi in the mornings or a signature cocktail in the evenings.”³⁰

4. Tech-Savvy Front-Desk Experience

52. Conscious of the millennial mindset and the always plugged-in environment in which millennials operate, the Hotel RL brand also sought to re-think the hotel check-in and check-out experience, fully modernizing the experience by allowing check-in via mobile device app or self-service kiosks. As CEO Greg Mount explained on the eve of the first Hotel RL’s opening in Baltimore: “Our Hotel RLs will be among the most technologically advanced in the hospitality industry We will offer an airplane-style check-in experience granting our guests an opportunity to choose their specific room. Using their smartphones, these same guests can bypass the front desk if they choose. If for some reason a guest needs a guest room keycard, a kiosk in the lobby will be available for generating them with their mobile device.”³¹

²⁹ “Hotel RL Baltimore Inner Harbor Baltimore, Maryland USA,” *Hotel Junkie*, May 30, 2016, <https://hoteljunkiemag.com/tag/hotel-rl/> (last visited July 12, 2017).

³⁰ “Hotel RL Baltimore,” *Hotel Space*, June 1, 2016, <http://hotelspaceonline.com/projects/hotel-rl-baltimore/> (last visited July 12, 2017).

³¹ Photo Release, Red Lion Hotels Corp., “Hotel RL Baltimore One Step Closer to Aug. 1 Opening,” May 5, 2015, <http://investor.shareholder.com/rlhcorp/releasedetail.cfm?ReleaseID=910865> (last visited July 12, 2017).

53. The image below, from the Hotel RL Brooklyn, shows exemplary lobby check-in kiosks:



(Hotel RL Brooklyn)³²

54. Gettys likewise highlighted this forward-thinking technological element of the Hotel RL trade dress in an interview with *Architects + Artisans* magazine posted to the Gettys website: ““You can check in with your phone and open the guestroom door with your phone too,” says Jackson Thilenius, senior director for PULSE by Gettys. ‘There’s an open plan for coffee in the lobby with self-serve wine, and a live/work space for a group to work together.’”³³ And when the Hotel RL Spokane opened in August 2016 (after a conversion from an older brand), the local newspaper stressed the hotel’s advanced technological features as well, including on-the-go, self-service check-in: “[T]he 402-room hotel has been renamed and redesigned to reflect

³² Image available from the photo gallery at <https://www.redlion.com/bed-stuy> (last visited July 12, 2017).

³³ “A Baltimore Hotel by The Gettys Group,” *Architects + Artisans*, Aug. 11, 2015, available at http://www.gettys.com/wp-content/uploads/2015/12/01_Architects-Artisans_August-2015.pdf (last visited July 12, 2017).

changes in the way people travel, offering communal spaces with Wi-Fi, plenty of charging stations for electronic devices and check-in via kiosk or mobile app.”³⁴

C. Red Lion’s Investment in the Hotel RL Brand

55. Red Lion has dedicated a great deal of time, effort, and money toward creating, promoting, and marketing the Hotel RL brand and its associated trade dress throughout the United States. Since 2014, Red Lion’s investments in Hotel RL have exceeded \$3.2 million—with over \$725,000 paid to Gettys for its role in developing the Hotel RL design concept and instituting multiple property conversions, approximately \$120,000 spent on an additional branding agency for its role in further developing the Hotel RL design concept, approximately \$325,000 spent on creating and operating the Hotel RL Living Stage and lobby coffee bar, and over \$1.5 million dedicated to the Hotel RL franchise pipeline.

56. In addition to its seven current Hotel RL locations, Red Lion expects to launch twenty to thirty additional Hotel RL properties in fifteen to twenty-five states by the end of 2020.

D. Hard Rock Hotels Introduces Its “New” Boutique Hotel Brand at the June 4-6, 2017 NYU International Hospitality Industry Investment Conference

57. In mid-May of this year, Bill Linehan, Red Lion’s Chief Marketing Officer, was in Chicago, visiting with Roger Hill, Gettys’ founder, and Ron Swidler, one of the Gettys’ partners who had collaborated on the Hotel RL brand design. Hill and Swidler mentioned that they had been working with Hard Rock Hotels on “a brand” that would launch on Monday afternoon, June 5, at the NYU International Hospitality Industry Investment Conference, one of the leading nationwide industry conferences, held in Manhattan each year.

³⁴ Mike Prager, “Community, connectivity part of Hotel RL conversion,” *The Spokesman-Review*, Aug. 26, 2016, <http://www.spokesman.com/stories/2016/aug/26/community-connectivity-part-of-hotel-rl-conversion/> (last visited July 12, 2017).

58. Hill and Swidler said that they had been working with “Marco” on the project, a reference to Marco Roca, Hard Rock Hotels’ head of development, who both Linehan and Red Lion CEO Greg Mount knew from their Starwood Hotels & Resorts days.

59. Mount and Linehan, on behalf of Red Lion, flew to New York City and attended the NYU Conference, which took place on June 4-6 at the Marriott Marquis in Times Square. They even rearranged the schedule of some of Red Lion’s own planned meetings and events so as not to conflict with the Hard Rock Hotels’ announcement, which was sure to make a splash.

60. On Monday afternoon, June 5, Marco Roca took to the stage, just as Gettys had said. He announced Hard Rock Hotels’ new brand — “Reverb by Hard Rock.” He played a one-minute, ten-second video, which is now available on the website www.reverbhotels.com. Hard Rock also distributed a three-page factsheet (also available on www.reverbhotels.com) and a more detailed, thirty-page marketing brochure complete with a concept floor layout and lists of planned features that will “reinforce the unique DNA of the brand,” attached hereto as Exhibit 2.

61. What Greg Mount and Bill Linehan saw in these materials stunned them.

E. “Reverb by Hard Rock”

62. On information and belief, Hard Rock had started work on the Reverb brand as early as April 2015 — six months after Red Lion’s announcement of Hotel RL. According to Patent and Trademark Office records, Hard Rock filed to register the mark “Reverb” in connection with “Hotel services” on April 28, 2015.³⁵ Hard Rock registered the www.reverbhotels.com domain on June 4, 2016.³⁶

³⁵ See U.S. Trademark Application Serial No. 86612788 (filed Apr. 28, 2015).

³⁶ Domain registration record for www.reverbhotels.com, https://reports.internic.net/cgi/whois?whois_nic=reverbhotels.com&type=domain (last updated July 11, 2017).

63. One of the dictionary definitions of “reverb” is “an electronically produced echo effect in recorded music,”³⁷ which is ironic but apt, given the remarkable echoes between Hotel RL’s distinctive trade dress and design features — its “signature elements” or signature moments — and the design features of the announced Reverb brand. Hard Rock even calls them “Signature Elements.” See Exhibit 2 at 11-12.

64. Just like Red Lion’s Hotel RL, Reverb’s prime demographic is the “Creative Class and Millennial Mindset.” See Exhibit 2 at 27. Reverb positions itself as an “affordably cool, contemporary hotel brand for movers, shakers and creators.” *Id.* In a February 2017 interview with the *Destination Luxury* website (only recently discovered), Hard Rock’s Marco Roca, anticipating the forthcoming announcement, explained that “Reverb is millennial in mindset. It will be going after that group, that mindset, much like mine.”³⁸

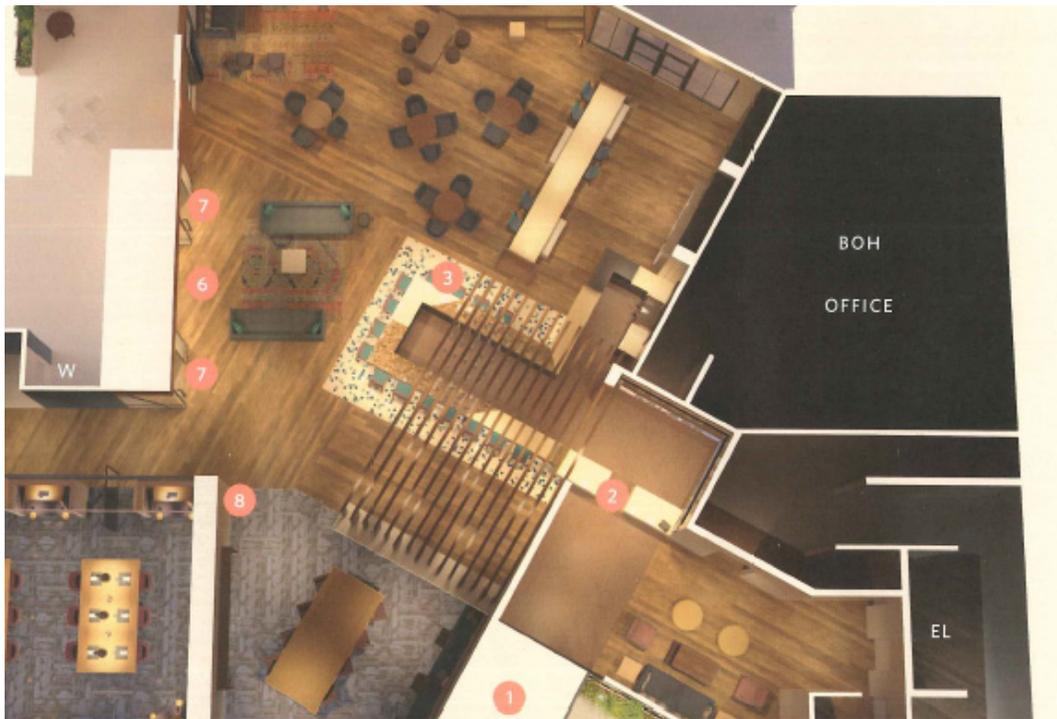
65. Also mimicking the Hotel RL brand, Reverb positions itself as an optimal platform for converting existing hotel properties in urban areas, whose owners may be interested in switching to a more modern and millennial-oriented atmosphere. According to the “Development Specs,” “Reverb by Hard Rock is ideally designed for hotel conversions and adaptive reuse.” See Exhibit 2 at 27.

66. Each of Hotel RL’s aforementioned signature design elements — the prominent lobby bar, The Living Stage, The Steps, and the technologically advanced front-desk experience — are replicated as well. In the thirty-page brand brochure, their duplicates are introduced in a list shamelessly (and incorrectly) titled “Signature Elements.” See Exhibit 2 at 11-12.

³⁷ See *reverb*, Webster’s (Third) New International Dictionary (1986).

³⁸ Steven Pope, “Interview With Hard Rock Hotel’s Chief Development Officer, Marco Roca,” Feb. 10, 2017, *Destination Luxury*, <https://destinationluxury.com/interview-hard-rock-hotels-chief-development-officer-marco-roca/> (last visited July 12, 2017).

67. Hotel RL’s lobby coffee bar has been carried over as the “Constant Grind Coffee/Bar. Barista café by day and bar at night.” The coffee bar’s prominence in the hotel lobby is clearly illustrated in the Reverb brochure figure below, where it is labeled with the number “3.”



(Exhibit 2 at 14)

68. In the February 2017 *Destination Luxury* interview, Hard Rock’s Marco Roca touted the lobby coffee bar — a “barista by day” and a “lounge by night” — as a key component of Reverb’s supposedly unique and distinguishing atmosphere:

Who goes home and says, “Oh wow, I stayed at a Courtyard!” What’s exciting about a Courtyard? We are going to provide something in that need [sic]. And they will be excited. You are going to come home and say, “Oh my god I stayed at the Reverb, it was unbelievable.” People will say, “Reverb?” “Yes, it’s one of

Hard Rock’s sub-brands. And it was exciting. There was a barista by day and there was a lounge by night.³⁹

69. Notably, Roca’s words echoed those of Red Lion CEO Greg Mount, who in announcing the launch of Hotel RL’s focal point three years earlier stressed the Hotel RL’s “open pavilion-style lobby” where “guests can enjoy an espresso and complimentary Wi-Fi in the mornings or a signature cocktail in the evenings.”⁴⁰ And just as Roca in his interview thought that a “barista by day” in the lobby would make the Reverb “exciting,” Mount had publicly shared those same thoughts about Hotel RL months earlier, in celebration of National Coffee Day 2016: “We set out to not just help make our guests feel at home, but give them experiences that are thrilling and inspiring. . . . A great cup of coffee from an expert barista, paired with our in-room amenities and innovative content program shows a higher level of care and thought that we know our guests expect.”⁴¹

70. Reverb’s echoes of Hotel RL carry beyond the lobby coffee bar. With the addition of one word, The Steps at the Hotel RL became Reverb’s “Communal Steps,” but both are stepped, stadium-like seating occupying a prominent place in the open lobby and performing the same function.

71. Likewise, with the deletion of one word, The Living Stage at the Hotel RL became Reverb’s “The Stage,” but, as with The Steps/“Communal Steps,” regardless of the

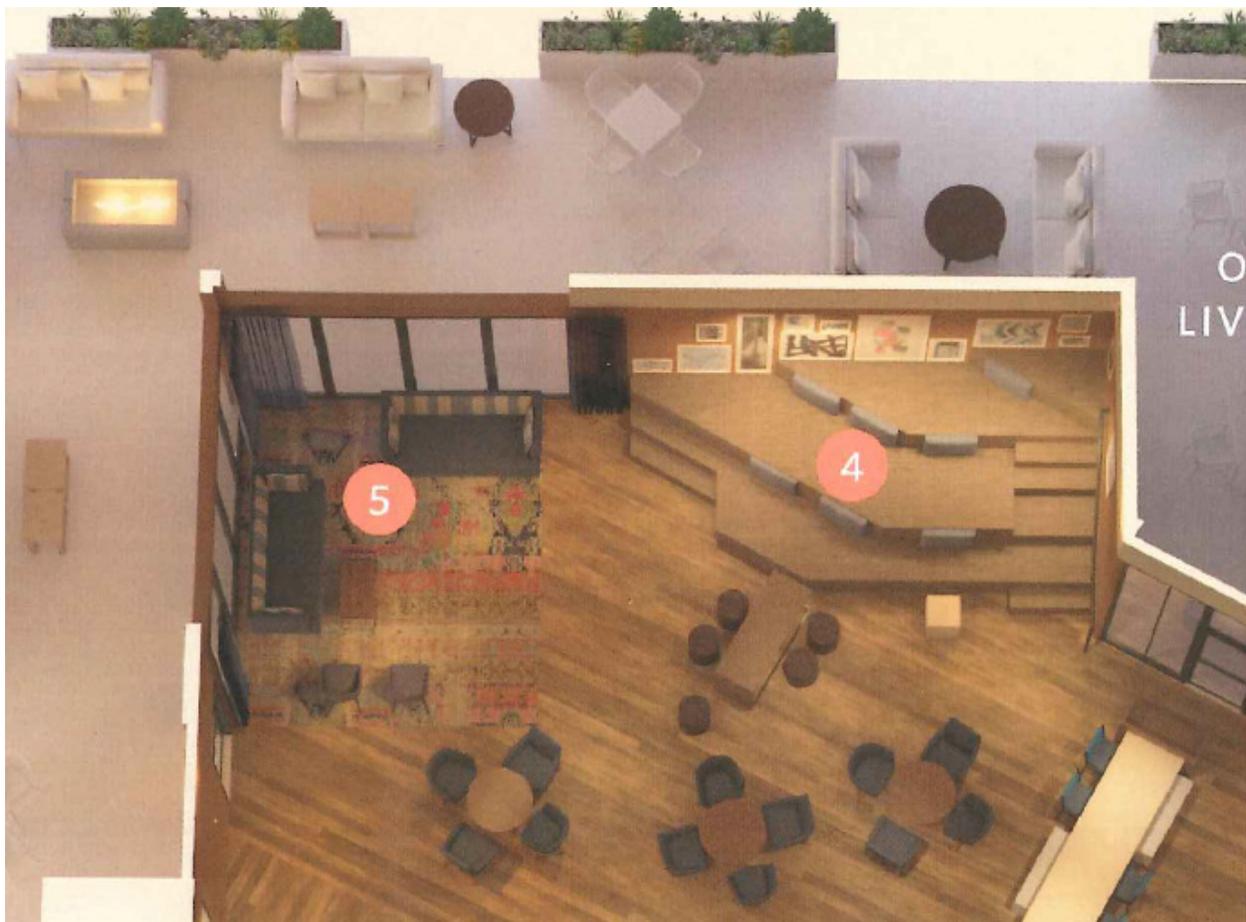
³⁹ Steven Pope, “Interview With Hard Rock Hotel’s Chief Development Officer, Marco Roca,” Feb. 10, 2017, *Destination Luxury*, <https://destinationluxury.com/interview-hard-rock-hotels-chief-development-officer-marco-roca/> (last visited July 12, 2017).

⁴⁰ Multimedia Release, Red Lion Hotels Corp., “RLHC Launches New Upscale Lifestyle Brand, Hotel RL,” Oct. 21, 2014, <http://investor.shareholder.com/rlhcorp/releasedetail.cfm?ReleaseID=877349> (last visited July 12, 2017).

⁴¹ Press Release, Red Lion Hotels Corp., “Hotel RL Honors National Coffee Day: Join Us for Award-Winning Grounds,” Sep. 29, 2016, <http://investor.shareholder.com/rlhcorp/releasedetail.cfm?ReleaseID=991399> (last visited July 12, 2017).

minor wordsmithing, the design elements themselves appear the same, even “feature[ing] local artists sharing their latest songs, paintings, poetry, and books.” See Exhibit 2 at 20.

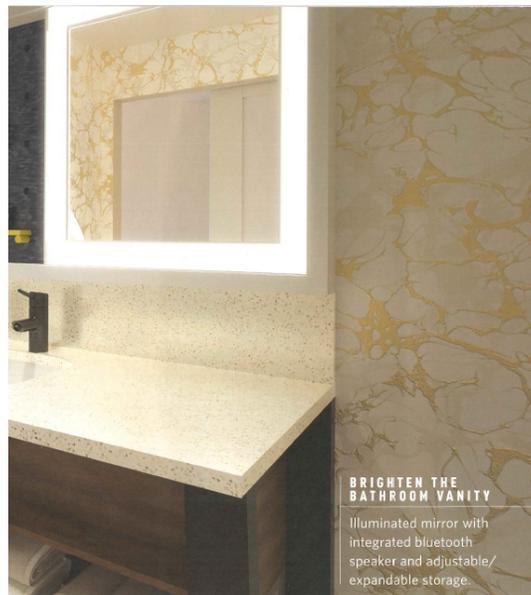
72. In addition, Reverb’s “Communal Steps” and “The Stage” are physically paired in the lobby in the same way as the Hotel RL’s Steps and Living Stage — these elements sit across from one another, so that The Steps can provide a viewing platform for activities on The Living Stage and enhance the casual community atmosphere of that portion of the lobby. The figure below from Reverb’s marketing material shows Reverb’s “Communal Steps” and “The Stage” paired in identical fashion; the “Communal Steps” are labeled with the number 4, “The Stage” with number 5:



(Exhibit 2 at 14)

73. Reverb also copied Hotel RL’s tech-centric rethinking of the guest check-in process, again incorrectly characterizing it as one of Reverb’s — as opposed to Hotel RL’s — “Signature Elements.” In the marketing brochure, Reverb’s name for the new process is “Fly-By Check-In,” but it is positioned identically to Hotel RL’s forward-thinking, millennial-inspired approach: “Check-in is fully integrated into the activity and functionality of the lobby. Guests can choose to be greeted and served, check themselves in, or bypass the desk and go straight to their rooms.” Exhibit 2 at 18. This includes use of “self or assisted check-in pods” — in other words, kiosks, like those shown above in Hotel RL Brooklyn.

74. The Reverb marketing documents Hard Rock provided in New York bear other tell-tale fingerprints that Reverb’s design features were copied directly from Hotel RL. Another of the so-called “Signature Elements” presented in the Reverb brochure is entitled “Brighten the Bathroom Vanity” and depicts a mirror with a supposedly distinctive illuminated border:



(Exhibit 2 at 26)

75. The Hotel RL Spokane, whose guestroom interiors The Gettys Group also helped to design, already uses the same, indistinguishable kind of illuminated mirror:



(Hotel RL Spokane)⁴²

76. Similarly, another of the “Signature Elements” in the Reverb guestroom interior is dubbed “Expandable Sleep Space” and contemplates a pull-out bed hidden, when not in use, behind a modern-themed wood façade. *See Exhibit 2* at 12. But the guestrooms of the Hotel RL Baltimore, the first Hotel RL — again designed with Gettys’ consulting services— already have this supposedly unique feature, as noted in an online hotel magazine: “But perhaps the most impressive thing about this room is the amount of space. . . . Below the flatscreen, neatly housed behind a wood façade, is a pull out bed, which works for a child or as a couch.”⁴³

⁴² Image available from the photo gallery at <https://www.redlion.com/park-spokane> (last visited July 12, 2017).

⁴³ “Hotel RL Baltimore Inner Harbor Baltimore, Maryland USA,” *Hotel Junkie*, May 30, 2016, <https://hoteljunkiemag.com/tag/hotel-rl/> (last visited July 12, 2017).

F. The Threat of Consumer Confusion and Loss of Distinctiveness

77. After seeing Hard Rock's Reverb announcement, and observing the shocking similarities, that same day, in a suite at the NYU conference hotel, Red Lion's Greg Mount and Bill Linehan confronted Gettys' Ron Swidler to express their outrage.

78. Swidler did not deny that Hard Rock had recycled key features of Hotel RL's trade dress and brand identity, such as lobby coffee bar, The Steps, The Living Steps, and the tech-savvy check-in process. Instead, after Mount had stepped out of the room, Swidler told Linehan, in sum or substance, that there was no malice intended, that "I think I shouldn't be saying much at all," but that "I'm sure everything can be corrected."

79. To date, however, no one at Hard Rock or Gettys has contacted Red Lion to resolve the situation. The reverbhoteles.com website remains active, with links to the Reverb brand factsheet distributed at the NYU conference, which includes a list of and depiction of Reverb's supposed "Signature Elements."

80. Public reports about the Reverb launch have also begun. On June 6, the *Boutique Design* website published a story on "Reverb by Hard Rock," explaining that "Hard Rock Intl. is rolling out a new select-service hotel brand geared toward the creative class and millennial-minded travelers" and describing how "[e]ach Reverb by Hard Rock will include 11 signature elements," including "The Stage," "Communal Steps," a "'Constant Grind' coffee/bar venue that serves as a barista café by day and a bar at night," and a "'Fly-By' check-in featuring pods with options to bypass or have a self- or assisted-check-in experience."⁴⁴

⁴⁴ "Hard Rock Amps Up Portfolio with Reverb," *Boutique Design*, Jun. 6, 2017, <http://www.boutiquedesign.com/content/hard-rock-amps-up-portfolio-with-reverb> (last visited July 12, 2017).

81. The *Boutique Design* story also reported that participants in the Reverb project expect it “to be a growth driver for the company”⁴⁵ and Hard Rock’s own marketing brochure touts that the Reverb brand has “[o]ver 50+ hotel deals in the pipeline.” Exhibit 2 at 28. Based on the brochure’s map, it appears that approximately half of those hotels will open in the United States, including, apparently, in the New York, Pacific Northwest, Mid-Atlantic, Midwest, and Rockies regions, where it is expected they would compete head-to-head with Hotel RL’s current properties.

82. The *Hotel Management*⁴⁶ and the *Hotel News Resource* websites⁴⁷ also reported on the launch of “Reverb by Hard Rock” at the NYU Conference.

83. Hard Rock’s public launch and nationwide promotion and marketing of the infringing “Reverb by Hard Rock” brand are causing irreparable damage to Red Lion. If Hard Rock’s activities are not enjoined, Red Lion will continue to suffer irreparable harm and injury to its goodwill and reputation.

Count I
Trade Dress Infringement
(15 U.S.C. § 1125)

84. Plaintiff Red Lion realleges paragraphs 1 through 83 of this Complaint as if fully set forth herein.

⁴⁵ *Id.*

⁴⁶ David Eisen, “Unperturbed hotel industry met with new brands on day 1 of NYU conference,” *Hotel Management*, June 5, 2017, <http://www.hotelmanagement.net/development/unperturbed-hotel-industry-met-new-brands-day-1-nyu-conference> (last visited July 12, 2017).

⁴⁷ Chris Fernandes, “HVS Report – Key Takeaways: 2017 NYU International Hospitality Industry Investment Conference,” *Hotel News Resource*, June 13, 2017, <https://www.hotelnewsresource.com/article94966.html> (last visited July 12, 2017).

85. Red Lion consciously created and designed its Hotel RL line of hotels to have a unique and distinctive interior design and decor, evocative of the atmosphere of a Pacific Northwest coffeehouse and geared toward millennium mindset travelers, focused around a combination of signature design elements forming the Hotel RL trade dress, including a prominent lobby coffee bar, The Living Stage, The Steps, and a tech-savvy front-desk experience.

86. Since at least the public announcement of the Hotel RL brand in October 2014 and the opening of the first Hotel RL location in Baltimore in August 2015, Red Lion has continuously used its distinctive Hotel RL trade dress in connection with the promotion, marketing, advertising, franchising, management, and operation of Hotel RL brand properties throughout the United States.

87. Red Lion has invested significant time, effort, and money in creating, promoting, advertising, and marketing the Hotel RL brand and its associated trade-dress design throughout the United States. This includes nationwide advertising campaigns, industry presentations and interviews, sales and development calls, as well as the maintenance of a website dedicated to the Hotel RL brand, www.redlion.com/hotel-rl, which prominently features Hotel RL's signature elements and trade dress.

88. The Hotel RL trade dress is not functional and was adopted by Red Lion to give its Hotel RL line of hotels a distinctive appearance that would indicate a single source for all Hotel RL properties.

89. The Hotel RL trade dress is fanciful, inherently distinctive, and well recognized, representing the source of Red Lion's hotel and hospitality services in the millennial mindset-oriented, three-star, full-service hotel segment. Through consistent use of the Hotel RL trade

dress at Hotel RL properties across the country, and in associated promotion, advertising, and sales efforts and materials, Red Lion has built up substantial goodwill in this trade dress throughout the United States, including but not limited to the State of New York, where Red Lion operates the Hotel RL Brooklyn.

90. Travelers, hotel guests, hotel property owners, and potential franchisees have come to associate the Hotel RL trade dress with a hotel experience originating from Red Lion. Accordingly, Hotel RL's distinctive trade dress — including the prominent lobby coffee bar, The Living Stage, The Steps, and the tech-savvy front-desk experience — have become valuable assets of Red Lion.

91. As set forth in the Factual Background above, Defendant Hard Rock's "Reverb by Hard Rock" design — announced years after Hotel RL's launch — copies and infringes Red Lion's distinctive Hotel RL trade dress, including the signature elements of a prominent lobby coffee bar, The Living Stage, The Steps, and a tech-savvy front-desk experience.

92. The "Reverb by Hard Rock" brand is in fact a copy and colorable imitation of Red Lion's Hotel RL brand.

93. Hard Rock has copied and infringed Red Lion's unique and distinctive Hotel RL trade dress without authorization, license, or consent from Red Lion.

94. On information and belief, Hard Rock copied the Hotel RL trade dress into its "Reverb" brand with full knowledge and awareness of the Hotel RL brand, signature design elements, and trade dress. Indeed, Hard Rock retained the same design firm that had assisted Red Lion in the development and design of the Hotel RL brand, The Gettys Group, to also design the "Reverb" brand.

95. Red Lion's Hotel RL hotels and Hard Rock's Reverb hotels compete in the same geographical markets and product segments. Both are primarily geared toward millennial-mindset travelers looking for an upscale experience in a three-star hotel setting, and to existing hotel property owners seeking to convert their properties to a more modern atmosphere. Both also focus on opening hotel properties in major urban areas throughout the United States and engage in nationwide promotion, advertising, and marketing of their respective hotel brands.

96. Because Red Lion's and Hard Rock's hotels are competitive products and services sold in the same channels of trade to similar travelers, property owners, and customers, consumers are likely to confuse the source of the Hotel RL and "Reverb by Hard Rock" brands.

97. On information and belief, Hard Rock's continued infringement of Red Lion's trade dress is willful, deliberate, and in bad faith because, on information and belief, as set forth above, Hard Rock adopted its "Reverb" brand with full knowledge and awareness of the pre-existing Hotel RL brand, signature design elements, and trade dress.

98. Hard Rock's public launch and nationwide promotion and marketing of the infringing "Reverb by Hard Rock" brand is causing irreparable damage to Red Lion. If Hard Rock's activities are not enjoined, Red Lion will continue to suffer irreparable harm and injury to its goodwill and reputation.

99. Red Lion has no adequate remedy at law for these injuries.

100. Red Lion is therefore entitled to a permanent injunction restraining Hard Rock, as well as all of its agents, servants, employees, attorneys, and all persons acting in concert with them, from continuing to use the Hotel RL trade dress in a misleading, confusing, and infringing manner.

101. On information and belief, Hard Rock has also been unjustly enriched through its appropriation of Hotel RL's signature design elements and distinctive trade dress. Red Lion is therefore entitled to disgorgement and an accounting of Hard Rock's profits from the trade dress infringement.

102. Hard Rock is liable to Red Lion for Hard Rock's infringing profits, as well as damages to be determined by the Court through trial, and Red Lion's reasonable attorney fees and costs.

Count II
Injury to Business Reputation and State Anti-Dilution

103. Plaintiff Red Lion realleges paragraphs 1 through 102 of this Complaint as if fully set forth herein.

104. This cause of action arises under § 360-1 of the New York General Business Law.

105. Red Lion owns and possesses a strong trade dress in its signature Hotel RL design elements, including the prominent lobby coffee bar, The Living Stage, The Steps, and a tech-savvy front-desk experience. This trade dress has a distinctive quality and has acquired secondary meaning such that it has become associated in the public's mind with Red Lion and the Hotel RL brand, distinguishing it from other hotel brands.

106. By virtue of the public, nationwide launch and marketing of its "Reverb by Hard Rock" brand, which copies each of the distinctive elements of the Hotel RL interior design, Defendant Hard Rock has both injured Red Lion's business reputation and created a likelihood that Hotel RL's distinctive design and trade dress will be diluted.

107. Hard Rock's public launch and nationwide promotion and marketing of the infringing "Reverb by Hard Rock" brand is causing irreparable damage to Red Lion. If Hard

Rock's activities are not enjoined, Red Lion will continue to suffer irreparable harm and injury to its goodwill and reputation.

108. Red Lion has no adequate remedy at law for these injuries.

109. Red Lion is therefore entitled to a permanent injunction restraining Hard Rock, as well as all of its agents, servants, employees, attorneys, and all persons acting in concert with them, from continuing to use the Hotel RL trade dress in a misleading, confusing, and infringing manner.

110. On information and belief, Hard Rock has also been unjustly enriched through its appropriation of Hotel RL's signature design elements and distinctive trade dress. Red Lion is therefore entitled to disgorgement and an accounting of Hard Rock's profits from the trade dress infringement.

111. Hard Rock is liable to Red Lion for Hard Rock's infringing profits, as well as damages to be determined by the Court through trial, and Red Lion's reasonable attorney fees and costs.

Count III
Common Law Unfair Competition

112. Plaintiff Red Lion realleges paragraphs 1 through 111 of this Complaint as if fully set forth herein.

113. Defendant Hard Rock has engaged in a course of unfair competition by promoting, marketing, and advertising its "Reverb by Hard Rock" brand hotels in direct competition with Plaintiff Red Lion's Hotel RL brand, while having misappropriated unique and distinctive, signature interior design elements from the Hotel RL brand, including a prominent lobby coffee bar, The Living Stage, The Steps, and a tech-savvy front-desk experience.

114. Hard Rock's acts of unfair competition include retaining and collaborating with The Gettys Group to create the "Reverb by Hard Rock" hotel design, with, on information and belief, full knowledge and awareness (or, at a minimum, reckless disregard) of the fact that Gettys had assisted Red Lion in the creation, launch, design, and build out of the Hotel RL brand and its associated signature elements.

115. As set forth above, including in Count I, Red Lion's Hotel RL hotels and Hard Rock's "Reverb" hotels compete in the same geographical markets and product segments and are sold in the same channels of trade to similar travelers, property owners, and customers. As a result, consumers are likely to confuse the source of the Hotel RL and "Reverb by Hard Rock" brands and Hard Rock will unfairly trade off of the goodwill and reputation that Red Lion has built up in the Hotel RL brand, its signature elements, and its distinctive interior design and atmosphere.

116. Hard Rock's public launch and nationwide promotion and marketing of the infringing "Reverb by Hard Rock" brand is causing irreparable damage to Red Lion. If Hard Rock's activities are not enjoined, Red Lion will continue to suffer irreparable harm and injury to its goodwill and reputation.

117. Red Lion has no adequate remedy at law for these injuries.

118. Red Lion is therefore entitled to a permanent injunction restraining Hard Rock, as well as all of its agents, servants, employees, attorneys, and all persons acting in concert with them, from continuing to use the Hotel RL trade dress in a confusing and unfairly competitive manner.

119. On information and belief, Hard Rock has also been unjustly enriched through its appropriation of Hotel RL's signature design elements and distinctive trade dress. Red Lion is

therefore entitled to disgorgement and an accounting of Hard Rock's profits from this unfair competition.

120. Hard Rock is liable to Red Lion for Hard Rock's infringing profits, as well as damages to be determined by the Court through trial, and Red Lion's reasonable attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Red Lion prays:

1. that a judgment be entered in Red Lion's favor and against Hard Rock on Counts I to III;

2. that Hard Rock, its officers, employees, agents, attorneys, and all persons acting in concert, participation or combination with Hard Rock, be permanently enjoined and restrained from continuing to use the Hotel RL trade dress and confusingly similar variations thereof in a misleading, unfairly competitive, and infringing manner;

3. that Hard Rock be required to pay to Red Lion its profits and Red Lion's damages for injuries sustained by Red Lion as a result of Hard Rock's infringement of said trade dress and unfair competition, in an amount to be determined at trial, together with interest pursuant to 15 U.S.C. § 1117(a);

4. that Hard Rock be required to pay Red Lion reasonable attorneys' fees and costs pursuant to 15 U.S.C. § 1117(a);

5. that Hard Rock be required to impound and to recall all infringing materials, designs, models, advertisements, and business plans, and to deliver them to Red Lion or its counsel for destruction; and

6. that Red Lion may have such other and further relief as the equities of the case may require and to the Court may seem just.

JURY DEMAND

Plaintiff Red Lion demands a trial by jury on all issues so triable

Dated: New York, New York
July 12, 2017

Matthew A. Taylor
DUANE MORRIS LLP
30 South 17th Street
Philadelphia, PA 19103
Tel.: (215) 979-1000
Email: mataylor@duanemorris.com

– and –

DUANE MORRIS LLP

By: /s/ Evangelos Michailidis
Evangelos Michailidis
Ralph Carter
1540 Broadway
New York, New York 10036
Tel.: (212) 692-1000
Email: emichailidis@duanemorris.com
rcarter@duanemorris.com

*Attorneys for Plaintiff
Red Lion Hotels Corporation*