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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

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EXACT MARKETING, INC. d/b/a	:	
LIZARD SKINS, a Utah Corporation	:	
	:	COMPLAINT
Plaintiff,	:	
	:	Civil No. 2:18cv00193
vs.	:	
	:	Magistrate Judge Brooke C. Wells
UNIQUE SPORTS PRODUCTS, INC.,	:	
d/b/a HOT GLOVE, and HOT GLOVE,	:	
INC.,	:	
	:	
Defendants.	:	

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Plaintiff Exact Marketing Inc., d/b/a Lizard Skins (“Lizard Skins” or “Plaintiff”) by and through its undersigned counsel, complains of defendants Unique Sports Products, Inc., d/b/a Hot Glove, and Hot Glove, Inc. (collectively “Defendants”) as follows:

**PARTIES, JURISDICTION & VENUE**

1. Plaintiff Exact Marketing Inc., d/b/a Lizard Skins is a Utah corporation, with its principal place of business in American Fork, Utah. Lizard Skins is engaged in the manufacturing, marketing and sales of a distinctive grip tape used by athletes in baseball,

lacrosse, hockey, mountain biking, and road biking throughout the United States under the Lizard Skins® trademark.

2. Upon information and belief, Unique Sports Products Inc. d/b/a Hot Glove is a Georgia corporation located in Alpharetta, Georgia.

3. Upon information and belief, Hot Glove, Inc. is a Georgia corporation located in Woodstock, Georgia.

4. Defendants are also in the business of manufacturing grip tape which they sell throughout the United States.

5. This action involves violations of the federal Lanham Act. Jurisdiction is conferred under the Lanham Act, 15 U.S.C. § 1121, and federal question jurisdiction, 28 U.S.C. § 1331. Jurisdiction for the non-federal question claims arise under 28 U.S.C. § 1367, because those claims are so related to claims in this action within the Court's original jurisdiction that they form part of the same case or controversy.

6. Alternatively, because Plaintiff and Defendants are citizens of different states and because the amount in controversy exceeds \$75,000, jurisdiction is conferred under 28 U.S.C. § 1332.

7. Defendants do business throughout the United States, including in Utah, and are subject to personal jurisdiction in this Court.

8. Further, the injuries complained of occurred in this district, forming another basis for jurisdiction.

9. Venue is proper under 28 U.S.C. § 1391, in that a substantial part of the events giving rise to the claims asserted herein occurred in this District, and Defendants are subject to the personal jurisdiction of this Court.

### **GENERAL ALLEGATIONS**

10. Lizard Skins markets, manufactures and sells its distinctive grip tape throughout the United States, and has done so for many years.

11. Lizard Skins began developing its grip tape for the cycling industry in 2007 and began selling product to customers in March of 2009.

12. Building on decades of experience and expertise, Lizard Skins expanded beyond the cycling world into baseball in or around January of 2012, into lacrosse in or around January of 2015, and into hockey in or around November of 2016

13. In 2016, Lizard Skins became the official bat grip supplier of Major League Baseball (“MLB”). MLB players have used Lizard Skins bat grips in high profile settings, including Yasiel Puig’s use of Lizard Skins bat grip in the World Series and use by several MLB players in the All Star Game and Home Run Derby. In particular and among other things, Lizard Skins bat grip was used by seven (7) of the nine (9) starters for the Boston Red Sox in the World Series in 2013, including World Series MVP David Ortiz. Currently over 250 players in Major League Baseball are using Lizard Skins bat grips.

14. Lizard Skins bat grips come in three different thicknesses and three different color patterns.

15. First, Lizard Skins bat grips come in thicknesses of 1.8 mm, 1.1 mm, and 0.5 mm.

16. Second, Lizard Skins bat grip comes in (1) single color which has been utilized by Lizard Skins in commerce since January of 2012; (2) dual color – where the colors are split horizontally down the length of the grip tape, which has been utilized by Lizard Skins in commerce since September of 2013; and, (3) a number of unique “Camo” patterns which have been utilized by Lizard Skins in commerce since September of 2013.

17. Of the Camo patterns, there are two groups: (1) a two-color marble camo pattern, characterized by a swirling of two different colors on a solid background, which has been utilized by Lizard Skins in commerce since September of 2013:



and (2) a one color marble camo pattern, characterized by a dominant background color with one prominent swirling color, and utilized by Lizard Skins in commerce since February of 2014:



<https://lizardskins.com/baseball/bat-grip/0.5mm>

18. Lizard Skins has obtained federal trademark registration for several of its bat grip designs, including its one color marble camo pattern, Reg. No. 5,249,013, and its two color marble camo pattern, Reg. No. 5,239,859. In addition, Lizard Skins has obtained federal trademark registration for its bat grip containing embossed “Lizard Skins” with six staggered rows of ovals, Reg. No. 5,389,215. True and correct copies of these Trademark Registrations are attached hereto at Exhibit A.

19. All Lizard Skins bat grips, regardless of thickness or color, have oval indentations in staggered rows, and are embossed with the trade name:



<https://lizardskins.com/baseball/bat-grip/0.5mm>

20. Lizard Skins bat grip is sold in clear packaging.

21. Lizard Skins bat grip, with its Camo patterns, clear packaging, staggered oval indentation pattern, and embossed name, constitutes protectable trade dress. These design elements are for aesthetic and identifying purposes and not for functionality.

22. Defendants are a direct competitor of Lizard Skins.

23. Defendants appeared to have started in the business of tennis related products in or around 1972.

24. Operating at the websites [uniquesports.us](http://uniquesports.us) and [hotglove.com](http://hotglove.com), a consumer may purchase Defendants' products and, upon information and belief, have them shipped throughout the United States.

25. In addition, Defendants' bat grip is available for purchase and presumably worldwide shipment on Amazon.com: <https://www.amazon.com/Hot-Glove-Mega-1-5mm-Tacky/dp/B075FMJTZL>

26. Defendants have shipped product to Utah.

27. Upon information and belief, Defendants did not begin selling bat grip tape until 2017.

28. Defendants' bat grip tape comes in solid black, blue, red, and white as well as a camo pattern remarkably similar to Lizard Skins' two color marble camo pattern, characterized by a dominant primary background color with two swirling colors:



Hot Glove Mega Wraps at <https://www.uniquesports.us/product-category/baseball/bat-grips/>

29. A side-by-side comparison demonstrates the remarkably similarity between Lizard Skins two color marble camo pattern and Defendants' imitation. In the image on the right, the top product is Lizard Skins' bat grip and the bottom product is Defendants' Hot Glove Mega Wrap. In the image on the left, the top product is Defendants' Hot Glove Mega Wrap and the bottom product is Lizard Skins' bat grip:



30. Likewise, Defendants' bat grips utilize the same oval indentations in staggered rows and embossed name. In the image on the left, the top product is Defendants' Hot Glove Mega Wrap and the bottom product is Lizard Skins' bat grip:



Hot Glove Mega Wrap <https://www.uniquesports.us/wp-content/uploads/2017/11/HGMW-BK-demo.png>



31. Defendants' grip tape is sold in clear packaging.



Hot Glove Mega Wrap, <https://www.uniquesports.us/wp-content/uploads/2017/11/HGMW-CAM.png>

32. Upon information and belief, Defendants are aware of Lizard Skins' grip tape and its unique features particularly due to the prominence of Lizard Skins' product in the industry and media. Notwithstanding this knowledge, Defendants went ahead and began selling Hot Glove Mega Wrap grip tape utilizing the same or similar camo designs, embossing and indentations as Lizard Skins utilizes.

33. Lizard Skins has been damaged by Defendants' improper conduct, including but not limited to lost sales, as well as damage to its reputation from the inferior imitations sold by Defendants.

34. In addition, Defendants have been and are being unjustly enriched by copying and selling the Lizard Skins' designs and passing it off as their own.

**FIRST CLAIM FOR RELIEF**

**(Trademark Infringement, Lanham Act, 15 U.S.C. § 1051 *et seq.*)**

35. Plaintiff incorporates the preceding allegations as though set forth fully herein.

36. Defendants' Hot Glove Bat Wraps are infringing on Lizard Skins' trademarks, including but not limited to Reg. No. 5,389,215; Reg. No. 5,239,869; and Reg. No. 5,249,013.

37. Defendants' unauthorized use of the Lizard Skins design is likely to cause confusion, deception, and mistake by creating the false and misleading impression that Defendants' commercial activities, including their promotional activities and advertisements through the uniqueproducts.us and hotglove.com websites, and other media content, are associated or connected with Lizard Skins, or have the sponsorship, endorsement or approval of Lizard Skins.

38. Because Defendants' Hot Glove Mega Wrap bat grip copies the look and feel of the Lizard Skins grip tape, consumers will likely confuse them with Lizard Skins' products. In other words, Defendants are selling confusingly similar imitations of Lizard Skins' grip tape.

39. Moreover, Defendants actions demonstrate an intentional, willful, and malicious intent to infringe Lizard Skins' trademarks.

40. By copying and selling an imitation of the Lizard Skins products for their own benefit, Defendants have committed trademark infringement under the Lanham Act, 15 U.S.C. §§ 1114 and/or 1125.

41. Defendants' improper actions are resulting in the loss of Lizard Skins' customers, and tarnishing Lizard Skins' good will, thus causing Lizard Skins injury.

42. As a result of this unfair competition and trademark infringement, Lizard Skins is losing sales and Defendants are unjustly enriched, for which injury Lizard Skins is entitled,

under the Lanham Act, 15 U.S.C. §§ 1116(a) and 1117(a) and 1118(a), to a preliminary and permanent injunctive relief, actual damages and Defendants' profits. In light of the willful and egregious nature of Defendants' conduct, Lizard Skins is further entitled to treble damages and Lizard Skins' attorneys' fees and costs incurred.

**SECOND CLAIM FOR RELIEF**

**(Unfair Competition & Trade Dress Infringement, Lanham Act, 15 U.S.C. § 1125(a))**

43. Plaintiff incorporates the preceding allegations as though set forth fully herein.

44. The designs, details, and overall look and feel of Lizard Skins bat grip tape are inherently distinctive.

45. Through its extensive marketing and sales over the years, the Lizard Skins bat grips' designs, with swirling colors, oval indentations in staggered rows, and embossed logo, have become identified in the mind of the consumer with Lizard Skins' products.

46. Through its extensive and expensive marketing and sales, as well as decades of experience and expertise in the grip market, Lizard Skins has become the official bat grip supplier of Major League Baseball.

47. Because Lizard Skins' trade dress has come to identify the product's single source, it has taken on a secondary meaning.

48. Defendants' unauthorized use of the Lizard Skins design is likely to cause confusion, deception, and mistake by creating the false and misleading impression that Defendants' commercial activities, including their promotional activities and advertisements through the uniqueproducts.us and hotglove.com websites, and other media content, are associated or connected with Lizard Skins, or have the sponsorship, endorsement or approval of Lizard Skins.

49. Because Defendants' Hot Glove Mega Wrap bat grip copies the look and feel of the Lizard Skins grip tape, consumers will likely confuse them with Lizard Skins' products. In other words, Defendants are selling confusingly similar imitations of Lizard Skins' grip tape.

50. Moreover, Defendants actions demonstrate an intentional, willful, and malicious intent to infringe Lizard Skins' trade dress.

51. By copying and selling an imitation of the Lizard Skins products for their own benefit, Defendants have committed trade dress infringement under the Lanham Act, 15 U.S.C. § 1125(a).

52. Defendants' improper actions are resulting in the loss of Lizard Skins' customers, and tarnishing Lizard Skins' good will, thus causing Lizard Skins injury.

53. As a result of this unfair competition and trade dress infringement, Lizard Skins is losing sales and Defendants are unjustly enriched, for which injury Lizard Skins is entitled, under the Lanham Act, 15 U.S.C. §§ 1116(a) and 1117(a) and 1118(a), to a preliminary and permanent injunctive relief, actual damages and Defendants' profits. In light of the willful and egregious nature of Defendants' conduct, Lizard Skins is further entitled to treble damages and Lizard Skins' attorneys' fees and costs incurred.

**THIRD CLAIM FOR RELIEF**  
**(Common Law Trade Dress Infringement)**

54. Plaintiff incorporates the preceding allegations as though set forth fully herein.

55. Defendants' unauthorized use of confusingly similar imitations of the Lizard Skins grip tape is likely to cause confusion, deception, and mistake by creating the false and misleading impression that the Defendants are associated or connected with Lizard Skins, or has the sponsorship, endorsement, or approval of Lizard Skins.

56. Defendants' conduct constitutes infringement of the common law rights of Lizard Skins. Defendants' conduct has damaged and will continue to damage Lizard Skins' good will and reputation.

57. Defendants' actions violate the common law of Utah and have damaged and continue to damage Lizard Skins and the valuable Lizard Skins trade dress.

58. Defendants' improper actions are resulting in the loss of Lizard Skins' customers, and tarnishing Lizard Skins' good will, thus causing Lizard Skins injury.

59. Plaintiff requests relief as hereafter described in its Prayer for Relief.

**FOURTH CLAIM FOR RELIEF**  
**(Common Law Unfair Competition)**

60. Plaintiff incorporates the preceding allegations as though set forth fully herein.

61. By copying and selling an imitation of the Lizard Skins grip tape, Defendants have committed unfair competition.

62. Defendants' cheap imitations not only steal Lizard Skins' customers, but also tarnish Lizard Skins' products and reputation, thus causing it injury and damages.

63. As a result of Defendants' imitation, Lizard Skins is losing sales and Defendants are being unjustly enriched.

64. Lizard Skins is entitled to both temporary and permanent injunctive relief against such continuing misconduct, as well as monetary damages, and requests relief as hereafter described in its Prayer for Relief.

**FIFTH CLAIM FOR RELIEF**  
**(Deceptive Trade Practices, Utah Truth in Advertising Act, Utah Code Ann. § 13-11a-1)**

65. Plaintiff incorporates the preceding allegations as though set forth fully herein.

66. The designs, details, and overall look and feel of Lizard Skins bat grip are inherently distinctive.

67. Through its extensive marketing and sales over the years, the Lizard Skins bat grips' designs, with swirling colors and oval indentations, have become identified in the mind of the consumer with Lizard Skins' products.

68. And through its extensive marketing and sales, as well as decades of experience and expertise in the grip market, Lizard Skins has become the official bat grip supplier of Major League Baseball.

69. Because Lizard Skins' trade dress has come to identify the product's single source, it has taken on a secondary meaning.

70. Because Defendants' bat grip products copy the look and feel of the Lizard Skins grips, consumers will likely confuse them with Lizard Skins' products. In other words, Defendants' Hot Glove Mega Wrap bat grips' similarity to Lizard Skins' bat grips causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, affiliation, connection, or association of Defendants' products in violation of Utah Code Ann. § 13-11a-3(b)-(c)

71. Defendants' improper actions are resulting in the loss of Lizard Skins' customers, and tarnishing Lizard Skins' good will, thus causing Lizard Skins injury.

72. As a result of these deceptive trade practices, Lizard Skins is losing sales and Defendants are unjustly enriched, for which Lizard Skins is entitled, under the Utah Truth in Advertising Act, to injunctive relief and actual damages.

73. Plaintiff requests relief as hereafter described in its Prayer for Relief.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Exact Marketing, Inc. d/b/a Lizard Skins (“Lizard Skins”) demands entry of judgment in its favor and against defendants Unique Sports Products, Inc. d/b/a Hot Glove and Hot Glove, Inc. (collectively “Defendants”) as follows:

- A. For a permanent injunction precluding Defendants, their agents and representatives, as well as anyone else with actual knowledge of such injunction, from copying and selling imitations of the Lizard Skins grip tape.
- B. For Damages, in an amount to be determined at trial as measured by Lizard Skins’ lost sales and lost business opportunities, as well as the profits received by Defendants from copying and selling imitations of the Lizard Skins grip tape.
- C. For treble damages based on Defendants’ willful and intentional misconduct;
- D. For Lizard Skins’ attorney's fees and costs incurred;
- E. For Pre-judgment interest; and
- F. For such other or further relief as the Court may deem appropriate.

Dated this 1st day of March, 2018.

JONES, WALDO, HOLBROOK & McDONOUGH PC

By /s/ Nathan D. Thomas

Nathan D. Thomas  
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*Attorneys for Plaintiff*