

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

UNIQUE SPORTS )  
PRODUCTS, INC. )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
FERRARI IMPORTING )  
COMPANY )  
d/b/a GAMMA SPORTS )  
 )  
 )  
Defendant. )  
\_\_\_\_\_ )

CIVIL ACTION  
FILE NO. \_\_\_\_\_

**JURY DEMAND**

**COMPLAINT**

Plaintiff Unique Sports Products, Inc. (“Unique” or “Plaintiff”), for its  
Complaint against Defendant Ferrari Importing Company d/b/a Gamma Sports  
 (“Defendant” or “Gamma”), states as follows:

**PARTIES**

1.

Plaintiff Unique is a Georgia corporation. Unique’s principal place of  
business located at 840 McFarland Parkway, Alpharetta, Forsyth County, Georgia  
30004.

2.

Upon information and belief, Defendant Gamma is a Pennsylvania corporation with its principal place of business located at 200 Waterfront Drive, Pittsburgh, Pennsylvania 15222-4750.

**JURISDICTION AND VENUE**

3.

Upon information and belief, Defendant markets and sells products in the State of Georgia and actively conducts business in the State of Georgia and within this judicial district.

4.

At least some of the acts giving rise to the claims made by Plaintiff occurred within this judicial district.

5.

This Court has personal jurisdiction over Defendant.

6.

This Court has jurisdiction over the subject matter of this action pursuant to 15 U.S.C. §§ 1116(a), 1121, and 1125(a) and 28 U.S.C. §§ 1331, 1338, and 1367.

7.

Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and (c).

**FACTUAL BACKGROUND**

8.

Unique manufactures and markets specialty sport goods accessories, with many products in the tennis equipment industry including tennis racket strings.

9.

Unique's products are sold in sporting goods stores, the sporting goods sections of mass merchandise stores, and over the internet.

10.

Defendant Gamma makes and sells tennis strings, which are a major focus of its business, and uses channels of trade similar to those of Unique

11.

Unique and Defendant compete in the U.S. tennis string market and cause their products to enter interstate commerce.

12.

Defendant's tennis string advertisement and marketing materials consistently have made statements claiming that Defendant's tennis strings were #1, or top rated, or ranked first, or similar such statements and claims. Attached as Exhibit 1 are true and copies of examples of Defendant's tennis string advertising and marketing materials.

13.

The basis of Defendant's #1 ranking type claims is a survey conducted by the United States Racket Stringers Association, also known as the USRSA (the "USRSA"), which survey is specifically referenced in Defendant's advertising. See Ex. 1; Affidavit of Jeffrey Bartlett ("Bartlett Aff."), ¶ 2 (the Bartlett Aff. is attached as Exhibit 2); and Affidavit of Ray Harrington, ("Harrington Aff."), ¶ 2 (the Harrington Aff. is attached as Exhibit 3).

14.

According to the Executive Director of the USRSA, the USRSA conducted its survey by sending a string survey to a random selection of 1000 – 2000 of its members each year. See Affidavit of David Bone ("Bone Aff."), ¶¶ 1, 3, and 4 (the Bone Aff. is attached as Exhibit 4).

15.

The member-recipients of the survey are asked to rank only those strings that they personally installed at least 20 times in the prior year. Bone Aff., ¶ 2 and Ex. A to Bone Aff.; Bartlett Aff., ¶ 3; and Harrington Aff., ¶ 3.

16.

The USRSA included the rankings of strings that had as few as 12 – 15 responses. Bone Aff., ¶5.

17.

The completed surveys are returned to the USRSA on an anonymous basis.

Bone Aff., ¶ 4.

18.

The survey results were published annually in Racket Sports Industry, Racquet Tech, and Stringer's Assistant magazines (such survey hereinafter known as the "Survey"). Bone Aff., ¶ 2.

19.

The USRSA suspended the Survey in 2009, and no Survey was taken or published in 2010. Bone Aff., ¶ 7.

20.

Despite the discontinuation of the Survey, Defendant continues to advertise that its strings have top rankings based on past Surveys. See Ex. 1.

21.

Defendant had several of its employees sign up as members of the USRSA, and in some cases these employees were encouraged to use fictitious business names. Bartlett Aff., ¶ 4; Harrington Aff., ¶ 4.

22.

Defendant's employees were reimbursed for the cost of USRSA membership by Defendant. Bartlett Aff., ¶ 4; Harrington Aff., ¶ 4.

23.

These employees of Defendant did not work as stringers and did not string a sufficient number of rackets to qualify to fill out the Survey for tennis string products. Bartlett Aff., ¶ 4; Harrington Aff., ¶ 4.

24.

When Defendant's employees received the Survey, some were instructed to and did provide the blank Survey to an executive/owner of the Defendant, and others were instructed to fill out the Survey by ranking Defendant's strings highly and those of competitors' strings lower. Bartlett Aff., ¶ 5; Harrington Aff., ¶ 5.

25.

The Defendant's executives and/or owners filled out and submitted the Surveys that were provided by the Defendant's employees. Bartlett Aff., ¶ 5; Harrington Aff., ¶ 6.

26.

When the Defendant's executives and/or owners filled out the Surveys, the Defendant's tennis strings were given the highest scores and the Defendant's competitors were given low scores. Harrington Aff., ¶¶ 5, 6.

27.

An owner/executive of Defendant obtained or facilitated USRSA memberships for family members in order to provide access to additional Surveys, which were filled out in the same or similar manner as those obtained by Defendant's employees. Harrington Aff., ¶ 6.

28.

Upon information and belief, the Defendant caused the Survey results to be inaccurate and to rank the Defendant's tennis string products higher than ranked by qualified stringers. Harrington Aff., ¶¶ 7, 8.

29.

Upon information and belief, the Defendant's executives and/or owners intended their rankings to artificially inflate the scores for Defendant's tennis string products and inaccurately manipulate the Survey results so as to rank the Defendant's products higher than they would have ranked if only qualified and honest stringers submitted the Survey.

30.

Upon information and belief, Defendant knew that its practices caused the Survey to reflect inaccurate high scores for its products, but nevertheless advertised and continue to advertise that its tennis string products are ranked #1. See Bartlett Aff., ¶ 6; Harrington Aff., ¶¶ 7, 8.

31.

Upon information and belief, the Defendant used the #1 ranking and similar statements as a focus of their advertising and marketing, and intended for consumers to rely upon these claims as factually accurate, even though the Defendant knew or should have known of the false and misleading basis of the these claims.

32.

Upon information and belief, the Defendant's false and misleading descriptions of fact and false and misleading representations of fact in advertising and marketing materials about the Survey have actually deceived or had the capacity to deceive consumers of tennis racket strings.

33.

Upon information and belief, the Defendant's false and misleading descriptions of fact and false and misleading representations of fact in advertising and marketing materials about the Survey were material and likely to influence the purchasing decisions of consumers of tennis racket string.

**COUNT I**  
**LANHAM ACT § 43(a)**  
**UNFAIR COMPETITION AND FALSE DESCRIPTION**

34.

Unique repeats and re-alleges the averments contained in paragraphs 1 through 33 of this Complaint as if fully set forth herein.

35.

Through its false, misleading, and inaccurate ranking claims based on its own efforts to inaccurately alter the outcome in the Survey, Defendant has used false and misleading descriptions of fact, and false and misleading representations of fact in commercial advertising and promotion in a manner that misrepresents the nature, characteristics, and qualities of Defendant's goods.

36.

Defendant's false and misleading descriptions of fact and false and misleading representations of fact have harmed and are likely to damage Plaintiff.

37.

Defendant's conduct constitutes unfair competition and false description in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

38.

Such conduct on the part of Defendant has been and remains willful and intentional.

39.

Unique has been harmed by Defendant's wrongful actions.

40.

Unless Defendant is enjoined from continuing the aforementioned infringing and unlawful acts, Unique will suffer irreparable harm.

41.

Pursuant to Section 34 of the Lanham Act, 15 U.S.C. § 1116, Unique is entitled to preliminary and permanent injunctive relief to prevent damage to Unique and to prohibit Defendant from further violations of Section 43(a) of the Lanham Act.

42.

Furthermore, pursuant to Section 35 of the Lanham Act, 15 U.S.C. § 1117(a), Unique is entitled to monetary damages, attorneys' fees, costs, and prejudgment interest.

43.

This is an exceptional case under Section 35 of the Lanham Act, 15 U.S.C. § 1117(a), entitling Unique to recover up to three times its actual damages, Defendant's profits, prejudgment interest, attorneys' fees and the costs of this action.

**COUNT II**  
**VIOLATION OF GEORGIA'S UNIFORM DECEPTIVE TRADE**  
**PRACTICES ACT (O.C.G.A. § 10-1-372)**

44.

Unique repeats and re-alleges the averments contained in paragraphs 1 through 43 of this Complaint as if fully set forth herein.

45.

Defendant's conduct constitutes a representation of the characteristics, uses, and benefits of Defendant's goods, which such goods do not have.

46.

As detailed above, Defendant's deceptive trade practices have been intentional and willful.

47.

As a result of the foregoing, Defendant has caused and is likely to cause damage to Unique in violation of O.C.G.A. § 10-1-372.

48.

Unless Defendant is enjoined from continuing the aforementioned infringing and unlawful activities, Unique will suffer irreparable harm.

49.

Pursuant to O.C.G.A. § 10-1-373, Unique is entitled to preliminary and permanent injunctive relief as well as attorneys' fees and costs of this action.

### **COUNT III**

#### **ATTORNEYS' FEES AND EXPENSES (O.C.G.A. § 13-6-11)**

50.

Unique hereby incorporates and re-alleges the assertions in Paragraphs 1 to 49 above as if fully set forth herein.

51.

Defendant has acted in bad faith, have been stubbornly litigious, and have caused Unique unnecessary trouble and expense.

52.

Unique is therefore entitled to recover its attorneys' fees and expenses incurred in this action under O.C.G.A. § 13-6-11.

**COUNT IV**  
**ATTORNEYS' FEES AND EXPENSES**  
**OF LITIGATION UNDER O.C.G.A. § 13-6-11**

53.

Unique repeats and re-alleges the averments contained in paragraphs 1 through 52 of this Complaint as if fully set forth herein.

54.

Defendant has acted in bad faith, has been stubbornly litigious, and has caused Plaintiff unnecessary trouble and expense. As a result, Unique is entitled to an award of its reasonable attorneys' fees and costs in this action pursuant to O.C.G.A. § 13-6-11.

**Prayer for Relief**

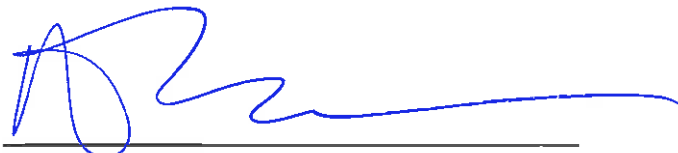
WHEREFORE, Plaintiff Unique prays for the following relief:

- (a) An award of actual and presumed monetary damages in an amount to be proven at trial, including an award of three times Plaintiff's damages and Defendant's profits under 15 U.S.C. § 1117(a);
- (b) preliminary and permanent injunctive relief prohibiting further wrongful acts of Defendant;
- (c) an award of attorneys' fees and expenses under 15 U.S.C. § 1117(a), O.C.G.A. §§ 10-1-373 and 13-6-11, and any other applicable laws;
- (d) an award of Plaintiff's costs and expenses;
- (e) an award of prejudgment interest; and
- (f) on each of Plaintiff's claims for relief, such further and other relief as the Court deems just and proper.

**Demand for Jury Trial**

Plaintiff demands a trial by jury on all issues so triable.

Respectfully submitted, this 16<sup>th</sup> day of February, 2011.

A handwritten signature in blue ink, consisting of a large, stylized initial 'W' followed by a long, horizontal, wavy line extending to the right.

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