

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

TALON GRIPS, INC.,

§

*Plaintiff,*

§

v.

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

LMP/MAIL ORDER VIDEO, INC.,

§

JURY TRIAL DEMANDED

*Defendant.*

§

**COMPLAINT**

TALON GRIPS, INC., for its Complaint against Defendant LMP/MAIL ORDER VIDEO, INC., states and alleges the following:

I.

**PARTIES AND SERVICE**

1. Plaintiff TALON GRIPS, INC. is a corporation organized under the laws of the State of Colorado having its principal place of business at Steamboat Springs, Colorado 80477 and is sometimes hereinafter referred to as "Talon Grips."

2. Upon information and belief, Defendant LMP/MAIL ORDER VIDEO, INC. is a corporation organized under the laws of the State of California, having offices at 4585 Murphy Canyon Road, San Diego, California 92123. Upon information and belief, LMP/MAIL ORDER VIDEO, INC. also does business as Lenny Magill Productions and GlockStore. Defendant LMP/MAIL ORDER VIDEO, INC. may be served with process by serving its registered service agent, Lenny Magill at 4585 Murphy Canyon Road, San Diego, California 92123. Defendant LMP/MAIL ORDER VIDEO, INC. is sometimes hereinafter referred to as "GlockStore."

## II.

### JURISDICTION AND VENUE

3. This is an action for patent infringement arising under the patent laws of the United States, Title 35 United States Code, 35 U.S.C § 1, *et seq.*
4. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338.
5. Defendant GlockStore is subject to the jurisdiction of this Court by reason of its acts of patent infringement which have been committed in this Judicial District and by virtue of its regularly conducted and systematic business contacts in this State through its website [www.glockstore.com](http://www.glockstore.com) and by mailing its catalogues into this State. As such, Defendant GlockStore has purposefully availed itself of the privilege of conducting business within this Judicial District; has established sufficient minimum contacts with this Judicial District such that it should reasonably and fairly anticipate being hauled into Court in this Judicial District; has purposefully directed activities at residents of this State; and at least a portion of the patent infringement claim alleged herein arises out of or is related to one or more of the foregoing activities.

6. Venue is proper in this Judicial District under 28 U.S.C. §§ 1391(b)-(c) and 1400(b).

## III.

### PLAINTIFF'S RIGHTS

7. On May 22, 2012, United States Patent No. 8,181,378 (the “‘378 Patent”), entitled “Wraparound Gun Grip” as invented by Derik Losinger of Page, Arizona was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the ‘378

Patent is attached as Exhibit A to this Complaint. The '378 Patent is enforceable and pursuant to 38 U.S.C. § 282 carries a statutory presumption of validity.

8. Derik Losinger, inventor of the '378 Patent, died intestate on May 18, 2012. His father, Dierk Losinger, was appointed the personal representative of the Estate of Derik Losinger.

9. Subsequently, on September 26, 2012, the entire right, title and interest in and to the '378 Patent was assigned to Dierk Losinger, as recorded in the records of the United States Patent and Trademark Office.

10. By an Exclusive License Agreement, Plaintiff Talon Grips became the exclusive licensee of the '378 Patent. Plaintiff Talon Grips has the exclusive right to sue or otherwise pursue litigation for past damages and future damages related to patent infringement and other legal issues that may arise as such pertains to the '378 Patent. Plaintiff Talon Grips has marked its "TALON GRIPS" product as per 35 U.S.C. § 287.

#### IV.

#### FACTS COMMON TO ALL COUNTS

11. On or about June 1, 2010, Derik Losinger initially filed his application for United States Patent, which subsequently matured into the '378 Patent on or about May 22, 2012.

12. At that time, Derik Losinger sold his then patent pending wraparound gun grips under the trademark "TALON GRIPS" through his then company, Talon Grips, LLC, an Arizona corporation based in Page, Arizona.

13. On or about March 1, 2011, Defendant GlockStore, by and through its Principal, Lenny Magill, placed an order for a variety of "TALON GRIPS" wraparound gun grips resulting in Invoice Number 7440, a copy which is attached hereto as Exhibit B.

14. On or about March 16, 2011, Defendant GlockStore, by and through its Principal, Lenny Magill, ordered additional quantities of "TALON GRIPS" wraparound gun grips resulting in Invoice Number 7730, a copy of which is attached hereto as Exhibit C.

15. On or about March 22, 2011, Defendant GlockStore, by and through its Principal, Lenny Magill, ordered a variety of "TALON GRIPS" wraparound gun grips that resulted in Invoice Number 7832, a copy of which is attached hereto as Exhibit D.

16. On or about March 29, 2011, Defendant GlockStore, by and through its Principal, Lenny Magill, ordered a variety of "TALON GRIPS" wraparound gun grips that resulted in Invoice Number 7981, a copy of which is attached hereto as Exhibit E.

17. On or about April 4, 2011, Defendant GlockStore, by and through its Principal, Lenny Magill, ordered multiple "TALON GRIPS" wraparound gun grips, which resulted in Invoice Number 8108, a copy of which is attached thereto as Exhibit F.

18. On or about April 28, 2011, Defendant GlockStore, by and through its Principal, Lenny Magill, ordered a variety of "TALON GRIPS" wraparound gun grips that resulted in Invoice Number 8488, a copy of which is attached hereto as Exhibit G.

19. With respect to the April 28, 2011 order of Exhibit G, this order, though initially placed by Defendant GlockStore, was subsequently cancelled and not filled.

20. Shortly after receiving its first order of "TALON GRIPS" wraparound gun grips from Derik Losinger, Defendant GlockStore, began selling such items for resale through its online store at [www.glockstore.com](http://www.glockstore.com) as well as in its catalogue. Attached hereto as Exhibit H are copies of selected pages of the GlockStore's 2011 catalogue showing its advertisement for sale of the "TALON GRIPS" products, bearing item number T0973.

21. On or about November 29, 2011, Defendant GlockStore, by and through its Principal, Lenny Magill, again attempted to order additional “TALON GRIPS” wraparound gun grips as reflected on Invoice Number 12012, a copy of which is attached as Exhibit I. After this order was placed by Defendant GlockStore, Derik Losinger cancelled the order and it was never filled.

22. On or about December 1, 2011, Derik Losinger’s patent application was published as Pub. No. US 2011/0289812A1, a copy of which is attached hereto as Exhibit J. Upon information and belief, Defendant GlockStore had actual knowledge of this published patent application.

23. Subsequently, Defendant GlockStore introduced its own line of wraparound gun grips known as its “FALCON GRIPS.” Defendant GlockStore’s “FALCON GRIPS” were advertised via its online store at [www.glockstore.com](http://www.glockstore.com) as well as in its catalogue as shown in its 2012 catalogue. Selected pages of Defendant’s 2012 catalogue are attached hereto as Exhibit K.

24. Upon information and belief, Defendant GlockStore has used the “TALON GRIPS” wraparound gun grips that it purchased from Derik Losinger as a pattern for its “FALCON GRIPS” wraparound gun grips, as the “FALCON GRIPS” are identical to those of the “TALON GRIPS” with the exception that the “T” cut-out in the grips is not present in Defendant’s “FALCON GRIPS” product. Indeed, by Defendant GlockStore’s adoption and use of the “FALCON GRIPS” mark, it sought to trade upon the goodwill of the “TALON GRIPS” mark used by Plaintiff Talon Grips, based upon the close association of “TALON” and “FALCON.”

25. A comparison of the identical nature of the “FALCON GRIPS” products offered by Defendant GlockStore as copied from Plaintiff Talon Grips’ ‘378 Patent is shown in Exhibit

L, depicting Plaintiff's patented "TALON GRIPS" product on the left side of the page and Defendant GlockStore's knock-off "FALCON GRIPS" product on the right side of the page.

26. Upon information and belief, Defendant GlockStore has slavishly copied and created an identical knock-off of the "TALON GRIPS" wraparound gun grips of Plaintiff Talon Grips. As further evidence of the slavish copying by Defendant GlockStore, Defendant GlockStore used the identical product number (T0973) that initially identified Plaintiff's "TALON GRIPS" product (see Exhibit H) to subsequently identify Defendant's "Falcon Grip" product with the same item number, "T0973," (see Exhibit K), therefore substituting its "FALCON GRIPS" product for Plaintiff's "TALON GRIPS" product in its online store, as well as in its catalogues.

27. Defendant GlockStore has slavishly copied the installation instructions as created by Derik Losinger, as shown in the comparison attached hereto as Exhibit M.

28. The activities of Defendant GlockStore did not go unnoticed, as on or about June 22, 2011, Derik Losinger's attorney notified Defendant GlockStore, by and through Lenny Magill, of the pending nature of the '378 Patent. A copy of this notice letter is attached hereto as Exhibit N.

29. Upon information and belief, a telephone call took place between Derik Losinger and Lenny Magill, after the June 22, 2011, notice letter had been received by Lenny Magill, wherein Lenny Magill stated that he didn't care about the rights that Derik Losinger had in his '378 Patent and defiantly challenged Derik Losinger by stating "If you don't like it, then sue me."

30. A copy of selected screen shots of Defendant GlockStore's current online sales of its "FALCON GRIPS" product at [www.glockstore.com](http://www.glockstore.com) are shown in Exhibit O attached hereto,

along with a picture of Defendant's retail "GlockStore" (which sells its "FALCON GRIPS" product), its "Contact" page and its "Privacy Policy" page. Further, Defendant GlockStore has sold its "FALCON GRIPS" products at various trade shows throughout the United States, including without limitation, at the nationally recognized industry "Shot Show," held January 15-18, 2013 in Las Vegas, Nevada.

V.

**CAUSES OF ACTION**

**COUNT ONE—INFRINGEMENT OF THE '378 PATENT**

31. The allegations set forth in all of the foregoing paragraphs are incorporated into this Count One as if fully set forth herein.

32. Upon information and belief, in violation of 35 U.S.C. § 271(a) Defendant GlockStore has directly infringed and continues to directly infringe the '378 Patent by making, using, importing, selling and/or offering for sale in the United States, including within this Judicial District, products that infringe one or more claims of the '378 Patent, all without authority of the Plaintiff Talon Grips.

33. As a prior purchaser of Plaintiff's patented "TALON GRIPS" product and having received actual notice provided by Plaintiff Talon Grips' predecessor (Exhibit N) and the prior publication of the patent application (Exhibit J), Defendant GlockStore had actual knowledge of the '378 Patent and that Defendant GlockStore knew not only that its use and sales of its knock-off "FALCON GRIPS" product constituted infringement, but also that Defendant GlockStore brazenly elected not to discontinue such use or sales and flaunt its infringement.

34. Plaintiff Talon Grips has been harmed by Defendant GlockStore's infringing activities.

VI.

**COUNT TWO—WILLFUL INFRINGEMENT**

35. The allegations set forth in all of the foregoing paragraphs are incorporated into this Count Two as if fully set forth herein.

36. Upon information and belief, Defendant GlockStore has long had actual knowledge of Plaintiff Talon Grips' '378 Patent. Upon information and belief, Defendant GlockStore as acted with objective recklessness and subjective recklessness in its continued infringement of Plaintiff Talon Grips' '378 Patent since prior to its May 22, 2012 issuance. Not only has Defendant GlockStore long had notice of Plaintiff Talon Grips' '378 Patent, Defendant GlockStore affirmatively challenged Plaintiff Talon Grips' predecessor to "sue him." Without justification, Defendant GlockStore continued to flagrantly infringe such '378 Patent. There was an objectively high likelihood of infringement and Defendant GlockStore knew this, or the infringement was so obvious that Defendant GlockStore should have known it.

37. As such, upon information and belief, Defendant GlockStore has willfully infringed Plaintiff Talon Grips' '378 Patent and Plaintiff Talon Grips has been harmed by Defendant GlockStore's activities.

VII.

**COUNT THREE—ATTORNEY'S FEES**

38. The allegations set forth in all of the foregoing paragraphs are incorporated into this Count Three as if fully set forth herein.

39. Based upon the facts detailed hereinabove, Plaintiff Talon Grips believes this case to be an exceptional case to which it is entitled to its attorney's fees pursuant to 35 U.S.C. § 285.

**VIII.**

**COUNT FOUR—FEDERAL UNFAIR COMPETITION**

40. The allegations set forth in all of the foregoing paragraphs are incorporated in this Count Four as if fully set forth herein.

41. Upon information and belief, the acts of Defendant GlockStore in the advertising, marketing, offering for sale, and selling of its “FALCON GRIPS” products in commerce is likely to cause confusion, mistake, and deceive the public in that Defendant GlockStore’s “FALCON GRIPS” products are likely to be mistaken for and confused with Plaintiff’s “TALON GRIPS” products in violation of § 43(a) of the LANHAM ACT, 15 U.S.C. § 1125(a).

42. Defendant GlockStore’s use of “FALCON GRIPS” for its wraparound gun grips is likely to create the mistaken impression in the public that Defendant GlockStore and/or its products are endorsed by Plaintiff Talon Grips or that Defendant GlockStore is sponsored by, affiliated with or in some manner associated with Plaintiff Talon Grips, in violation of § 43(a) of the LANHAM ACT, 15 U.S.C. § 1125(a).

43. Based upon the facts detailed hereinabove, Plaintiff Talon Grips believes this case to be an exceptional case to which it is entitled to treble the amount of actual damage suffered by Plaintiff Talon Grips and its attorney’s fees pursuant to § 35 of the LANHAM ACT, 15 U.S.C. § 1117.

**IX.**

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Talon Grips demands judgment for itself and against Defendant GlockStore as follows:

a. An adjudication that the ‘378 Patent is valid;

- b. An adjudication that Defendant GlockStore has infringed the '378 Patent;
- c. An award of damages to be paid by Defendant GlockStore adequate to compensate Plaintiff Talon Grips for its past infringement of the '378 Patent and any continuing infringement through the date such judgment is entered, including interest, costs, expenses, and an accounting of all infringing acts including, but not limited to, those acts presented at trial;
- d. An injunction enjoining Defendant GlockStore and its officers, directors, agents, servants, employees, affiliates, attorneys, and all others acting in privity or concert with them from:
  - (1) directly or indirectly infringing the '378 Patent;
  - (2) using any trade practices whatsoever, including those complained of herein, which tend to unfairly compete with or injure Plaintiff Talon Grip's business or goodwill;
- e. A declaration that Defendant GlockStore's patent infringement is willful;
- f. A recovery from Defendant GlockStore of treble the amount of actual damages suffered by Plaintiff Talon Grips pursuant to 15 U.S.C. § 1117;
- g. That all labels, signs, prints, packages, wrappers, and advertisements in the possession of Defendant GlockStore bearing the mark "FALCON GRIPS" and all plates, molds, matrices, and other means of marking same, shall be delivered up for destruction, pursuant to 15 U.S.C. § 1118;
- h. A declaration that this case is exceptional under 35 U.S.C. § 285 and 15 U.S.C. § 1117 and an award to Plaintiff Talon Grips of its reasonable attorney's fees;
- i. An award of Plaintiff Talon Grips' costs of this litigation; and,

j. An award to Plaintiff Talon Grips of such further relief at law or in equity as this Court deems just and proper.

X.

## **JURY DEMAND**

Pursuant to Federal Rules of Civil Procedure, Rule 38(b), Plaintiff Talon Grips hereby demands a trial by jury on all issues triable as such.

Dated: 04.18.2013

Respectfully submitted,

By: Richard L. Schwartz  
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**ATTORNEYS FOR PLAINTIFF  
TALON GRIPS, INC.**