



5. Upon information and belief, Robert Pignari is also doing business as Audio Video Sales Guy, and possibly under other seller names, on Amazon (hereinafter Robert Pignari and his d/b/a's are collectively referred to as "AVSG").

#### **JURISDICTION AND VENUE**

6. This Court has subject matter jurisdiction pursuant to 15 U.S.C. §§ 1116(a) and 1121 (actions arising under the Federal Trademark Act); 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1332 (diversity); and 28 U.S.C. § 1338 (trademarks/unfair competition).

7. Upon information and belief, this Court has personal jurisdiction over AVSG because, *inter alia*, AVSG has committed, or aided, abetted, contributed to, or participated in, acts of trademark infringement and unfair competition in the State of Indiana and in this Judicial District and has sold product complained of herein in this Judicial District.

8. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because, *inter alia*, AVSG transacts business in this Judicial District by offering for sale and selling the products complained of herein in Indiana, AVSG is subject to personal jurisdiction in this Judicial District, and a substantial part of the events or omissions giving rise to the claim occurred in this Judicial District, and Klipsch is located in and being damaged in this Judicial District.

#### **FACTUAL BACKGROUND**

9. Klipsch, one of the first U.S. loudspeaker companies, has been building premium speakers since 1946.

10. Klipsch loudspeakers have received numerous awards, industry recognition and are widely sought after by customers all over the world.

11. Klipsch takes great pride in its loudspeaker design and believes four principles to be the foundation for great sound: 1) high efficiency, 2) low distortion, 3) controlled directivity, and 4) flat frequency response.

12. Over the years, Klipsch has built up considerable goodwill with consumers who purchase its products and its products have an extremely good reputation.

13. Consumers have come to associate Klipsch with high-end audio equipment.

14. Klipsch is the owner of U.S. Trademark Registration No. 978,949 for the “KLIPSCH®” trademark for use in connection with audio loudspeakers. *See* Exhibit B. The KLIPSCH® trademark was duly registered on February 19, 1974 with a date of first use in commerce of 1947. *Id.*

15. Klipsch is the owner of U.S. Trademark Registration No. 2,917,215 for the “KLIPSCH®” trademark for use in connection with audio loudspeakers, subwoofers, amplifiers, and audio equipment, namely, audio speaker cabinets, speaker assemblies, computer speakers, computer audio players, audio and video processors, audio and video tuners. *See* Exhibit C. The KLIPSCH® trademark was duly registered on January 11, 2005 with a date of first use in commerce of 1947. *Id.*

16. Klipsch is the owner of U.S. Trademark Registration No. 3,863,511 for the “KLIPSCH®” trademark for use in connection with subwoofers, computer speakers, speaker docks, headphones, headsets for use with phones, PDAs, computers and gaming consoles. *See* Exhibit D. The KLIPSCH® trademark was duly registered on October 19, 2010 with a date of first use in commerce of 1947. *Id.*

17. All of the Klipsch’s registered trademarks set forth above are collectively hereinafter referred to as the “KLIPSCH® Registered Marks.”

18. Klipsch has spent millions of dollars in marketing its loudspeakers and subwoofers.

19. Klipsch has specific authorized distributors throughout the United States who are contractually permitted to sell KLIPSCH® audio products. Klipsch only allows certain distributors to market and promote its KLIPSCH® audio products on the Internet.

20. As a result of the popularity of Klipsch and its KLIPSCH® audio products, Klipsch has seen an increase in “grey market” sales of its KLIPSCH® audio products.

21. AVSG is not an authorized distributor of KLIPSCH® audio products.

22. AVSG is selling or has sold KLIPSCH® audio products on Amazon and shipped audio products to the State of Indiana without Klipsch’s permission or license from Klipsch.



**Final Details for Order #108-2137260-1721020**

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Order Placed: August 9, 2016  
 Amazon.com order number: 108-2137260-1721020  
 Order Total: \$129.95

Shipped on August 10, 2016	
<b>Items Ordered</b> 1 of: <i>Klipsch R-1650-CSM In-ceiling Loudspeaker</i> Sold by: audio video sales guy ( <a href="#">seller profile</a> )  Condition: New BRAND NEW SEALED IN THE BOX WITH FREE SHIPPING!	<b>Price</b> \$129.95
<b>Shipping Address:</b> Travis Ryan Turner 9481 W STARGAZER DR PENDLETON, IN 46064-7502 United States	Item(s) Subtotal: \$129.95 Shipping & Handling: \$0.00 ----- Total before tax: \$129.95 Sales Tax: \$0.00 ----- <b>Total for This Shipment: \$129.95</b> -----
<b>Shipping Speed:</b> Standard	-----

23. AVSG has advertised KLIPSCH® audio products for sale on Amazon as “BRAND NEW SEALED IN THE BOX WITH FREE SHIPPING!”.

24. AVSG is selling or has sold KLIPSCH® audio products in which Klipsch’s serial number stickers have been removed from the shipping boxes.

## Serial Number Removed



25. AVSG is selling or has sold KLIPSCH® audio products in which Klipsch's serial number stickers have been removed from the product and fake serial numbers have been placed on the products.

## Fake Serial Number Sticker



Original Klipsch Serial  
Number Sticker Location

26. The KLIPSCH® audio products being sold by AVSG are materially altered products from genuine KLIPSCH® audio products.

27. As it relates to Klipsch loudspeakers, Klipsch warrants to the *original retail purchaser* that its “product is to be free from defective materials and workmanship for a period of five (5) years from the date of purchase, if it is properly used and maintained.” *See* Exhibit E. Klipsch’s warranty terms and conditions are similar for other speaker products AVSG has sold.

28. The warranty that Klipsch offers has certain limitations, one of which is that “[t]his limited warranty is null and void for products with altered or missing serial numbers and for products not purchased from an authorized dealer.” *Id.*

29. AVSG is not an authorized dealer of KLIPSCH® audio products and as a result, any KLIPSCH® audio product sold by AVSG to retail consumers do not come with any warranty from Klipsch.

30. As a result of the use of fake serial numbers and the removal of the serial numbers from the packaging, the warranty on the speakers is void to customers of AVSG.

31. On September 7, 2016, counsel for Klipsch sent a cease and desist letter to AVSG that AVSG never responded to. *See* Exhibit F.

32. On October 26, 2016, after Amazon removed AVSG’s products from its website at Klipsch’s request and AVSG contacted Klipsch, counsel for Klipsch sent an email response to AVSG. *See* Exhibit G.

33. AVSG has refused to cooperate with Klipsch in its efforts to amicably resolve the dispute between the parties.

**COUNT I  
FEDERAL TRADEMARK INFRINGEMENT  
IN VIOLATION OF 15 U.S.C. § 1114**

34. Klipsch reincorporates the allegations contained in paragraphs 1-33 above as if fully set forth herein.

35. Klipsch is the owner of the KLIPSCH® Registered Marks. *See* Exhibits B, C and D. These registrations are valid, subsisting, uncancelled and unrevoked.

36. Klipsch has continuously used the KLIPSCH® trademark in connection with audio loudspeakers since 1947.

37. Klipsch's audio loudspeakers are sold throughout the United States and worldwide under the KLIPSCH® Registered Marks.

38. AVSG has infringed the KLIPSCH® Registered Marks through its unauthorized sales of KLIPSCH® audio products that are materially altered. There are material differences between genuine KLIPSCH® audio products and those being sold by or have been sold by AVSG. These material differences include:

- a. AVSG is selling and/or has sold KLIPSCH® audio products that have Klipsch's serial numbers removed from the speakers;
- b. AVSG is selling and/or has sold KLIPSCH® audio products that include fake serial numbers that have been placed on Klipsch's audio products;
- c. AVSG is selling and/or has sold KLIPSCH® audio products that have serial numbers removed from the product packaging; and
- d. AVSG is selling and/or has sold KLIPSCH® audio products to consumers with voided Klipsch warranties.

39. AVSG's Amazon listings creates or has created the false impression that AVSG is an authorized distributor of KLIPSCH® audio products.

40. AVSG's actions are likely to cause, and have in fact caused, confusion in the marketplace as to AVSG's affiliation, association, sponsorship, endorsement or approval by Klipsch of AVSG's actions.

41. AVSG's actions complained of herein are without permission, license, or authority of Klipsch and is likely to cause confusion, to cause mistake and/or to deceive a consumer and in fact have caused confusion, mistake and deceived at least one consumer.

42. AVSG's actions mislead and confuse consumers about the nature and quality of KLIPSCH® audio products that are purchased from AVSG.

43. AVSG's actions complained of herein constitute federal trademark infringement in violation of 15 U.S.C. § 1114.

44. AVSG's activities have caused and, unless enjoined by this Court, will continue to cause, irreparable injury and other damage to Klipsch's business, reputation and goodwill in its KLIPSCH® Registered Marks. Klipsch has no adequate remedy at law.

**COUNT II**  
**FEDERAL UNFAIR COMPETITION**  
**IN VIOLATION OF 15 U.S.C. § 1125(a)**

45. Klipsch reincorporates the allegations contained in paragraphs 1-44 above as if fully set forth herein.

46. Klipsch is the owner of the KLIPSCH® Registered Marks. *See* Exhibits B, C and D. These registrations are now valid, subsisting, uncancelled and unrevoked.

47. Klipsch has continuously used the KLIPSCH® trademark in connection with audio loudspeakers since 1947.

48. Klipsch's audio loudspeakers are sold throughout the United States and worldwide under the KLIPSCH® Registered Marks.

49. AVSG has committed acts of unfair competition through its unauthorized sales of KLIPSCH® audio loudspeakers that have been materially altered. There are material differences between genuine KLIPSCH® audio products and those being sold or that have been sold by AVSG. These material differences include:

- a. AVSG is selling and/or has sold KLIPSCH® audio products that have Klipsch's serial numbers removed from the speakers;
- b. AVSG is selling and/or has sold KLIPSCH® audio products that include fake serial numbers that have been placed on Klipsch's audio products;
- c. AVSG is selling and/or has sold KLIPSCH® audio products that have serial numbers removed from the product packaging; and
- d. AVSG is selling and/or has sold KLIPSCH® audio products to consumers with voided Klipsch warranties.

50. AVSG's Amazon listings create or have created the false impression that AVSG is an authorized distributor of KLIPSCH® products.

51. AVSG's use of the KLIPSCH® Registered Marks is likely, and in fact has, caused confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of AVSG with Klipsch, or as to the origin, sponsorship, or approval by Klipsch of the audio products AVSG is selling using the KLIPSCH® Registered Marks.

52. AVSG's commercial advertising and promotion of KLIPSCH® audio products on Amazon, misrepresents the nature and quality of the KLIPSCH® audio products that AVSG is selling because, amongst other things, consumers believe that the KLIPSCH® audio products

they purchase or have purchased have not been materially altered and come with Klipsch's warranty.

53. AVSG's actions are or were without permission, license, or authority of Klipsch and is likely to cause confusion, to cause mistake and/or to deceive consumers.

54. AVSG's actions complained of herein constitute federal unfair competition in violation of 15 U.S.C. § 1125(a).

55. AVSG's activities have caused and, unless enjoined by this Court, will continue to cause, irreparable injury and other damage to Klipsch's business, reputation and good will in its KLIPSCH® Registered Marks. Klipsch has no adequate remedy at law.

#### **JURY DEMAND**

56. Klipsch requests a trial by jury for all issues proper for a jury to decide.

#### **PRAYER FOR RELIEF**

WHEREFORE, Klipsch prays that this Court grant the following relief:

- (a) Judgment that AVSG's use of the KLIPSCH® Registered Marks infringes Klipsch's rights in its KLIPSCH® Registered Marks through AVSG's act of selling materially altered goods from genuine KLIPSCH® products;
- (b) Judgment that AVSG committed unfair competition by selling and offering for sale KLIPSCH® products that are materially different from genuine KLIPSCH® products;
- (c) An award of AVSG's profits and actual damages suffered by Klipsch as a result of AVSG's acts of infringement and unfair competition, together with interest, and that Klipsch's recovery be trebled, pursuant to Section 35 of the Lanham Act (15 U.S.C. § 1117);

- (d) An Order for AVSG to surrender for destruction all labels, packaging, advertisements, KLIPSCH® audio products, and other materials incorporating or reproducing the KLIPSCH® Registered Marks, pursuant to Section 36 of the Lanham Act (15 U.S.C. § 1118);
- (e) An Order preliminarily and permanently enjoining AVSG, and his affiliates and subsidiaries, and each of its officers, agents, servants, employees, successors, and assigns, and all others in concert and privity with them from selling or offering for sale KLIPSCH® audio products that are materially different from genuine KLIPSCH® products, from infringement of the KLIPSCH® Registered Marks, from unfairly competing with Klipsch, from engaging in unfair and deceptive trade practices and from injuring Klipsch's business reputation, pursuant to Section 34 of the Lanham Act (15 U.S.C. § 1116);
- (f) An award to Klipsch of its attorneys' fees, costs and expenses incurred in prosecuting this action, pursuant to Section 35 of the Lanham Act (15 U.S.C. § 1117); and
- (g) All other just and proper relief.

Dated: November 7, 2016

Respectfully submitted,



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