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**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

KLIPSCH GROUP, INC.,	)	
	)	
Plaintiff,	)	Cause No.: 1:17-cv-34
	)	
vs.	)	<b>JURY TRIAL DEMANDED</b>
	)	
CONCEALEDAUDIO.COM	)	
	)	
Defendant.	)	
_____	)	

**COMPLAINT**

Plaintiff Klipsch Group, Inc. (“Klipsch”), as and for its Complaint against Defendant Concealedaudio.com, hereby alleges as follows:

**NATURE OF THE ACTION**

1. This is an action under the Lanham Act, 15 U.S.C. §§ 1, et seq., for trademark infringement and unfair competition.

**PARTIES**

2. Klipsch Group, Inc. is an Indiana corporation having its principal place of business located at 3502 Woodview Trace, Suite 200, Indianapolis, IN 46268.

3. Upon information and belief, Concealedaudio.com (hereinafter “Concealedaudio”) is an internet only seller of electronic products who conceals their true identity from customers by using drop shipping addresses and registering their domain name through a third party. See Exhibit A.

### **JURISDICTION AND VENUE**

4. 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).

5. This Court has personal jurisdiction over Concealedaudio because, *inter alia*, Concealedaudio 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 its product complained of herein in this Judicial District.

6. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because, *inter alia*, Concealedaudio transacts business in this Judicial District by offering for sale and selling the products complained of herein in Indiana, Concealedaudio 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**

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

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

9. 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.

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

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

12. 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.*

13. 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.*

14. 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.*

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

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

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

18. 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.

19. Concealedaudio is not an authorized distributor of KLIPSCH® audio products.

20. Concealedaudio is selling KLIPSCH® audio products online without Klipsch’s permission or license from Klipsch. *See* Exhibit A.

21. The KLIPSCH® audio products being sold by Concealedaudio are materially different products from genuine KLIPSCH® audio products.

22. 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.

23. 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.*

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

25. Concealedaudio purports to be selling “new” KLIPSCH® audio products.


ConcealedAudio.com  
Hide Your Speakers Not Your Sound



Search

0 item(s) - \$0.00

Manufacturers Speakers

Manufacturers Klipsch Klipsch CDT-2650-C II



Description Downloads Specifications Reviews (0)

With integrated whole-house audio systems becoming more popular than ever, Klipsch designed the CDT-2650-C II to meet the market's demand for a high-performance in-ceiling loudspeaker that easily challenges the inherent limitations of fixed locations.

Klipsch CDT-2650-C II

Brand: Klipsch  
Product Code: CDT-2650-C II  
Item Condition: New  
Sold As: Each  
Availability: In Stock

~~\$250.00~~

**\$118.45**

Price in reward points: 1184

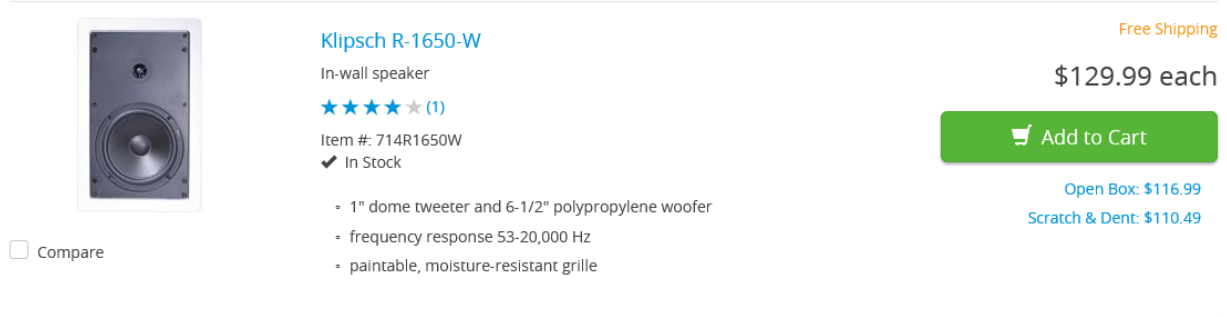
10 or more \$111.00

Qty

26. Klipsch has a minimum-advertised-price (“MAP”) policy with respect to the online sale of KLIPSCH® audio products that its authorized distributors must contractually follow in the United States.

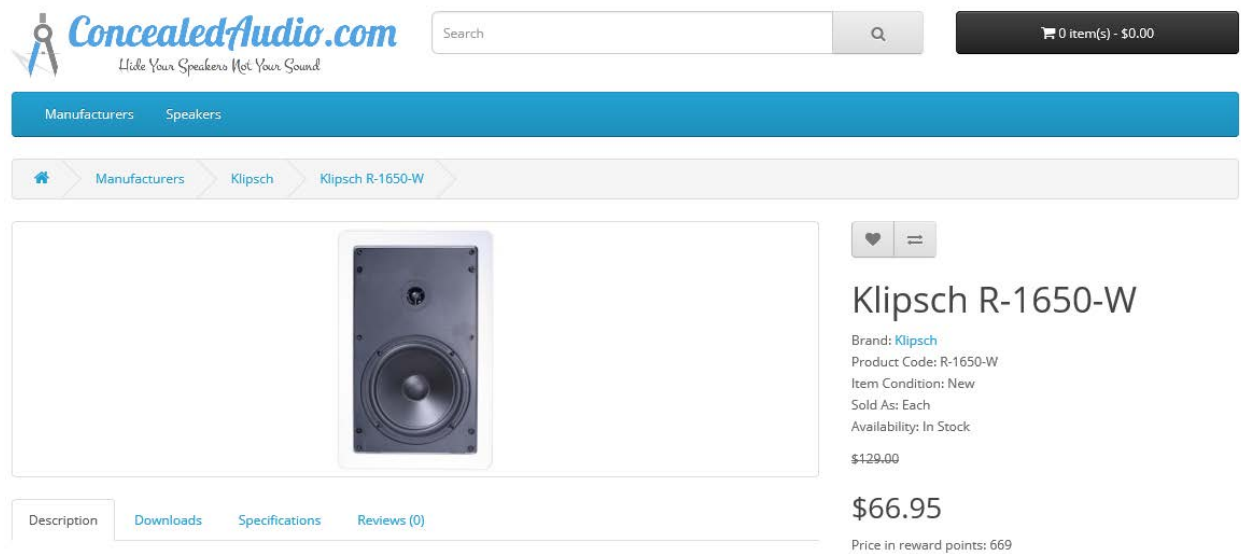
27. Klipsch’s MAP policy is in place to avoid price erosion on its products, so that its authorized online distributors can co-exist with one another, and so that its consumers see consistent pricing.

28. Concealedaudio is selling KLIPSCH® products at highly discounted prices than Klipsch’s authorized distributors and below MAP.



This screenshot shows a product listing for the Klipsch R-1650-W in-wall speaker. On the left is a product image of the speaker. To its right, the text reads: "Klipsch R-1650-W", "In-wall speaker", a 5-star rating with "(1)" review, "Item #: 714R1650W", and "In Stock". Below this is a list of features: "1" dome tweeter and 6-1/2" polypropylene woofer", "frequency response 53-20,000 Hz", and "paintable, moisture-resistant grille". On the right side, it says "Free Shipping" and "\$129.99 each". A green "Add to Cart" button is present, along with "Open Box: \$116.99" and "Scratch & Dent: \$110.49". A "Compare" checkbox is located at the bottom left of the product area.

### Example of Authorized Distributor's Price on KLIPSCH® R-1650-W



This screenshot shows the product page for the Klipsch R-1650-W on the website ConcealedAudio.com. The site logo and tagline "Hide Your Speakers Not Your Sound" are at the top left. A search bar and a shopping cart icon showing "0 item(s) - \$0.00" are at the top right. A blue navigation bar contains "Manufacturers" and "Speakers". Below it, a breadcrumb trail shows "Manufacturers > Klipsch > Klipsch R-1650-W". The main product image is on the left. To its right, the product name "Klipsch R-1650-W" is displayed, along with details: "Brand: Klipsch", "Product Code: R-1650-W", "Item Condition: New", "Sold As: Each", and "Availability: In Stock". The original price is "\$129.00" and the current price is "\$66.95". A note at the bottom right says "Price in reward points: 669". At the bottom left, there are tabs for "Description", "Downloads", "Specifications", and "Reviews (0)".

### Concealedaudio Price on Same KLIPSCH® R-1650-W

29. Klipsch's authorized online distributors have complained about Concealedaudio's conduct as they wrongfully believe that Concealedaudio is an authorized online distributor of KLIPSCH® audio products and are in violation of Klipsch's MAP Policy.

30. Concealedaudio removes product serial numbers from KLIPSCH® audio product packaging.



31. Concealedaudio removes product serial numbers from the actual KLIPSCH® speakers it sells and replaces them with fake serial numbers.



Fake Serial Number

32. As a result of the use of fake serial numbers and the removal of the serial numbers from the packages, the warranty on the speakers Concealedaudio sells is void to customers of Concealedaudio.

33. As a result of Concealedaudio not being an authorized dealer of KLIPSCH® audio products, the warranty that Klipsch provides to customers of authorized dealers is not provided as Concealedaudio's

**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 now valid, subsisting, uncancelled and unrevoked.

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

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

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

- a. Concealedaudio is selling KLIPSCH® audio products that have Klipsch's serial numbers removed from the speakers and their packaging;



- b. Concealedaudio is selling KLIPSCH® audio products that include fake serial numbers that have been placed on Klipsch's speakers;
- c. Concealedaudio is selling KLIPSCH® products at overly discounted prices; and
- d. Concealedaudio is selling KLIPSCH® products to consumers with voided Klipsch warranties

39. Concealedaudio's advertising creates the false impression that Concealedaudio is an authorized distributor of KLIPSCH® products.

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

41. Concealedaudio'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.

42. Concealedaudio's actions are likely to mislead and confuse consumers about the nature and quality of KLIPSCH® audio products that are purchased through Concealedaudio.

43. Concealedaudio'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.

**II**  
**FEDERAL UNFAIR COMPETITION**  
**IN VIOLATION OF 15 U.S.C. § 1125**

44. Klipsch reincorporates the allegations contained in paragraphs 1-43 above as if fully set forth herein.

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

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

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

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

- a. Concealedaudio is selling KLIPSCH® audio products that have serial numbers removed from the speakers and their packaging;
- b. Concealedaudio is selling KLIPSCH® audio products that include fake serial numbers that have been placed on Klipsch's speakers;
- c. Concealedaudio is selling KLIPSCH® audio products at discounted pricing; and
- d. Concealedaudio is selling KLIPSCH® audio products to consumers with voided Klipsch warranties.

49. Concealedaudio's advertising creates the false impression that Concealedaudio is an authorized distributor of KLIPSCH® products. *See* Exhibit A.

50. Concealedaudio's use of the KLIPSCH® Registered Marks is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Concealedaudio with Klipsch, or as to the origin, sponsorship, or approval by Klipsch of the audio products Concealedaudio is selling using the KLIPSCH® Registered Marks.

51. Concealedaudio's commercial advertising and promotion of KLIPSCH® audio products on its website, misrepresents the nature and quality of the KLIPSCH® audio products that Concealedaudio is selling because, amongst other things, consumers believe that the KLIPSCH® audio products they purchase have not been materially altered and come with Klipsch's warranty.

52. Concealedaudio's actions are without permission, license, or authority of Klipsch and is likely to cause confusion, to cause mistake and/or to deceive a consumer.

53. Concealedaudio'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**

54. 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 Concealedaudio's use of the KLIPSCH® Registered Marks infringes Klipsch's rights in its KLIPSCH® Registered Marks through Concealedaudio's act of selling materially different goods from genuine KLIPSCH® products;

- (b) Judgment that Concealedaudio committed unfair competition by selling and offering for sale KLIPSCH® products that are materially different from genuine KLIPSCH® products;
- (c) An award of Concealedaudio's profits and actual damages suffered by Klipsch as a result of Concealedaudio'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 Concealedaudio to surrender for destruction all labels, packaging, advertisements, 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 Concealedaudio, and its 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® 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: January 5, 2017

Respectfully submitted,

/s/ Dean E. McConnell

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