

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

KLIPSCH GROUP, INC., )  
)  
Plaintiff, )  
)  
vs. )  
)  
AUDIOSURPLUS )  
)  
Defendant. )  
\_\_\_\_\_)

Cause No.: 1:18-cv-479

**JURY TRIAL DEMANDED**



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**COMPLAINT**

Plaintiff Klipsch Group, Inc. (“Klipsch”), as and for its Complaint against Defendant Audiosurplus, 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, unfair competition, and false/misleading advertising.

**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. Audiosurplus is a seller of electronic products on Amazon who conceals their identity from customers.

### **JURISDICTION AND VENUE**

4. Upon information and belief, 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. Upon information and belief, this Court has personal jurisdiction over Audiosurplus because, *inter alia*, Audiosurplus has committed, or aided, abetted, contributed to, or participated in, acts of trademark infringement, unfair competition, and false/misleading advertising in the State of Indiana and in this Judicial District and has sold the products complained of herein in this Judicial District.

6. Upon information and belief, venue is proper in this district pursuant to 28 U.S.C. § 1391 because, *inter alia*, Audiosurplus transacts business in this Judicial District by offering for sale and selling the products complained of herein in Indiana, Audiosurplus 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 A. 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 B. 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 C. 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.”

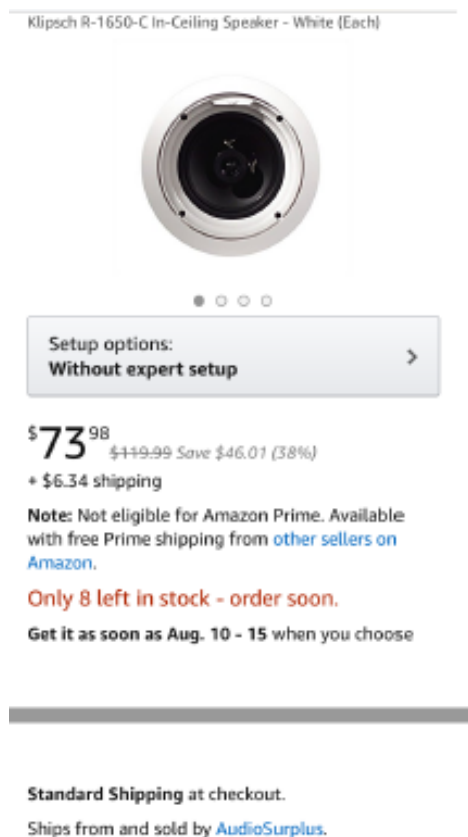
16. Klipsch has spent millions of dollars in marketing its loudspeakers and subwoofers.

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 on Amazon.

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. Audiosurplus is not an authorized distributor of KLIPSCH® audio products.

20. Audiosurplus is selling KLIPSCH® audio products on Amazon without Klipsch’s permission or license from Klipsch. A representative KLIPSCH® audio product, the Klipsch R-1650-C In-Ceiling Speaker, offered by Audiosurplus on Amazon is illustrated below.



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

22. As it relates to Klipsch speakers, 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 D.

23. Klipsch’s warranty is “null and void for products with altered or missing serial numbers and for products not purchased from an authorized dealer.” *Id.*

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

25. Audiosurplus does not represent to consumers that it is not an authorized dealer or that any of the products it sells do not come with a warranty.

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. Reduced prices affect consumer perception of the brand and affect relationships with other vendors.

29. Audiosurplus is selling KLIPSCH® audio products at highly discounted prices than Klipsch’s authorized distributors and below MAP.

## Klipsch R-1650-C

In-ceiling speaker



Item # 714R1650C | MFR # 1007209

✓ In Stock

★★★★★ 5 Reviews | 2 questions - 4 answers

**Ships Today**

Order within **4 hr 26 min** and it ships FREE today.

**\$119.99** each

Earn up to 120 Rewards points

[Add to Cart](#)

[Add to wishlist](#) [Get product alerts](#)


[Special financing offers](#)

[Ask an expert](#)

Klipsch R-1650-C - Front with grille off

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

Klipsch R-1650-C In-Ceiling Speaker - White (Each)



Setup options:  
**Without expert setup**

**\$73<sup>98</sup>** ~~\$119.99~~ Save \$46.01 (38%)

+ \$6.34 shipping

**Note:** Not eligible for Amazon Prime. Available with free Prime shipping from [other sellers on Amazon](#).

**Only 8 left in stock - order soon.**

Get it as soon as **Aug. 10 - 15** when you choose

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Standard Shipping at checkout.

Ships from and sold by [AudioSurplus](#).

### Audiosurplus Price on Same KLIPSCH® R-1650-C

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

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

32. Upon information and belief, Audiosurplus obtains KLIPSCH® audio products from an authorized dealer through a back-door channel.

33. Audiosurplus has consistently represented that it has product in stock when they do not based on a history of cancelled orders.

34. Audiosurplus does not represent to consumers that the KLIPSCH® audio products do not come with a warranty because it is not an authorized KLIPSCH® audio product dealer.

35. Audiosurplus represents that product will be received within a certain time period when they have consistently not been able to deliver product.

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

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

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

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

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

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

- a. Audiosurplus is selling KLIPSCH® audio products at overly discounted prices;  
and
- b. Audiosurplus is selling KLIPSCH® audio products to consumers with voided Klipsch warranties

41. Audiosurplus's advertising creates the false impression that Audiosurplus is an authorized distributor of KLIPSCH® audio products and has various quantities of KLIPSCH® audio products in inventory.

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

43. Audiosurplus'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.

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

45. Audiosurplus'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**

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

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

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

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

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

- a. Audiosurplus is selling KLIPSCH® audio products at discounted pricing; and
- b. Audiosurplus is selling KLIPSCH® audio products to consumers with voided Klipsch warranties.

51. Audiosurplus's advertising creates the false impression that Audiosurplus is an authorized distributor of KLIPSCH® products and has various quantities of KLIPSCH® audio products in inventory.

52. Audiosurplus'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 Audiosurplus

with Klipsch, or as to the origin, sponsorship, or approval by Klipsch of the audio products Audiosurplus is selling using the KLIPSCH® Registered Marks.

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

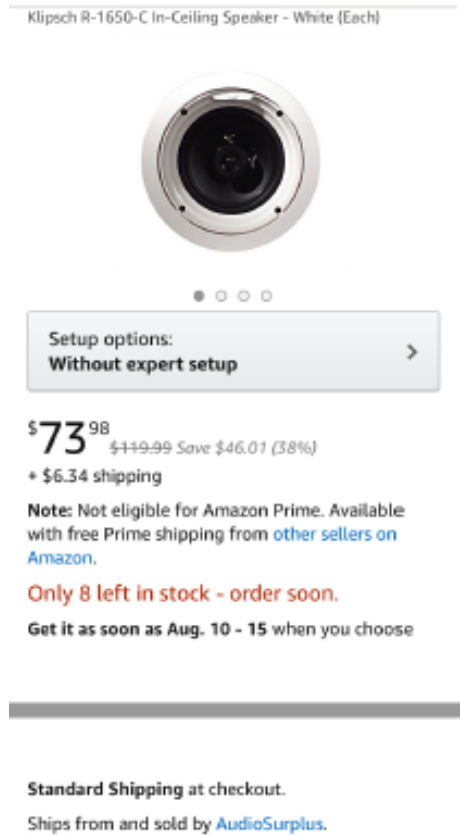
54. Audiosurplus's actions are without permission, license, or authority of Klipsch and is likely to cause confusion, to cause mistake and/or to deceive a consumer.

55. Audiosurplus'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.

### **III FALSE ADVERTISING**

56. Klipsch reincorporates the allegations contained in paragraphs 1-54 above as if fully set forth herein.

57. Audiosurplus represents on Amazon in advertisements to consumers that it has various quantities of KLIPSCH® audio products "in stock."



58. Each time Klipsch has tried to purchase KLIPSCH® audio products from Audiosurplus on Amazon through various sources an email is sent from Amazon indicating that the order has been shipped. See Exhibit E, Declaration of Travis Turner ¶ 3 (hereinafter “Decl. Turner ¶ \_\_\_”).

59. Approximately a day or two later, another email is sent by Amazon indicating that the order has been cancelled and refunding the purchase price because no product is in inventory. Decl. Turner ¶ 4.

60. Upon information and belief, Audiosurplus does not have inventory, or adequate inventory as indicated in its advertisements, to satisfy orders made on Amazon.

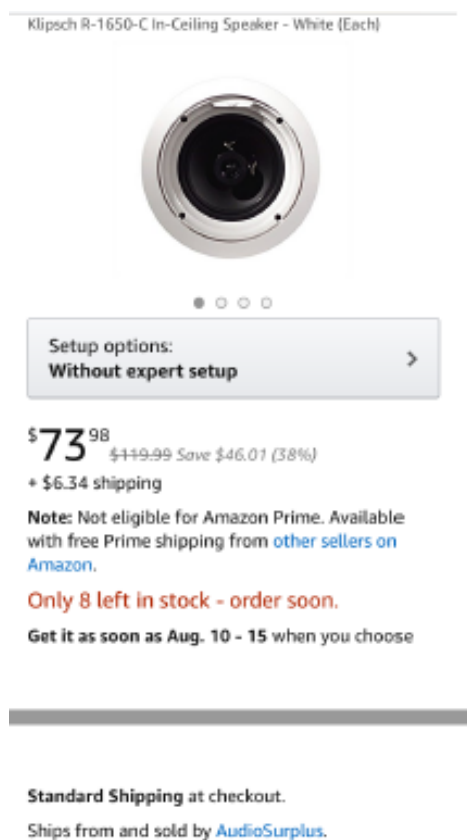
61. Audiosurplus’s conduct constitutes false and/or misleading advertising of Klipsch’s goods in violation of § 43(a) of the Lanham Act, as amended, 15 U.S.C. § 1125(a).

62. Audiosurplus’s advertisements do not inform consumers that the KLIPSCH® audio products do not come with a warranty.

63. Audiosurplus's advertisements do not inform consumers that Audiosurplus is not an authorized dealer of KLIPSCH® audio products.

64. Audiosurplus's conduct constitutes false and/or misleading advertising of Klipsch's goods in violation of § 43(a) of the Lanham Act, as amended, 15 U.S.C. § 1125(a).

65. As illustrated below, Audiosurplus's advertisements indicate that KLIPSCH® audio products will be received within a certain time period.



66. Despite having placed dozens of orders for KLIPSCH® audio products from Audiosurplus, Klipsch has only received two orders from Audiosurplus. Decl. Turner ¶ 5.

67. Audiosurplus does not deliver KLIPSCH® audio products in the time frames indicated in its advertisements on Amazon as almost all orders are cancelled and the payment refunded. Decl. Turner ¶ 6.

68. Audiosurplus's conduct constitutes false and/or misleading advertising of Klipsch's goods in violation of § 43(a) of the Lanham Act, as amended, 15 U.S.C. § 1125(a).

**JURY DEMAND**

69. 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 Audiosurplus's use of the KLIPSCH® Registered Marks infringes Klipsch's rights in its KLIPSCH® Registered Marks through Audiosurplus's act of selling materially different goods from genuine KLIPSCH® products;
- (b) Judgment that Audiosurplus committed unfair competition by selling and offering for sale KLIPSCH® products that are materially different from genuine KLIPSCH® products;
- (c) Judgment that Audiosurplus committed acts of false advertising by representing to consumers that Audiosurplus has inventory of KLIPSCH® products, not representing to consumers that the KLIPSCH® products being offered do not come with a warranty because they are not an authorized dealer, and representing that the KLIPSCH® products will be received within a certain time period when they consistently have not been able to deliver product;
- (d) An award of Audiosurplus's profits and actual damages suffered by Klipsch as a result of Audiosurplus's acts of infringement, unfair competition, and false advertising, together with interest, and that Klipsch's recovery be trebled, pursuant to Section 35 of the Lanham Act (15 U.S.C. § 1117);

- (e) An Order preliminarily and permanently enjoining Audiosurplus, 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, from committing acts of false advertising, 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: February 19, 2018

Respectfully submitted,

/s/ Dean E. McConnell

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