

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

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U.S. DISTRICT COURT  
INDIANAPOLIS DIVISION

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SOUTHERN DISTRICT  
OF INDIANA  
LAURA A. BOYCO  
CLERK

KLIPSCH GROUP, INC. and )  
AUDIO PRODUCTS INTERNATIONAL, )  
CORP., )

Plaintiffs, )

v. )

MONOPRICE, INC., )

Defendant. )  
)  
)  
)  
)  
)

Civil Action No. \_\_\_\_\_

**1:13-cv-0437 TWP -DML**

**COMPLAINT FOR PATENT INFRINGEMENT, TRADE DRESS  
INFRINGEMENT, UNFAIR COMPETITION, AND COPYRIGHT  
INFRINGEMENT**

Klipsch Group, Inc. (“Klipsch”) and Audio Products International Corp.  
(hereinafter “API”), by counsel, for their Complaint against Defendant Monoprice,  
Inc. (hereinafter “Monoprice”) allege and state:

Parties

1. Klipsch is a corporation organized and existing under Indiana law, with its principal place of business at 3502 Woodview Trace, Indianapolis, Indiana.
2. API is a corporation organized and existing under Canadian law, with its principal place of business at 3502 Woodview Trace, Indianapolis, Indiana. API is a wholly owned subsidiary of Klipsch.

3. Since July 2010, Klipsch has been the exclusive licensee of API to sell API's ENERGY® brand speakers, together with the ENERGY® TAKE CLASSIC™ 5.1 home theatre system. *See Exhibit 1, Product Brochure.*

4. Upon information and belief, Monoprice is a corporation organized and existing under the laws of the State of California, with its principal place of business at 11701 6th Street, Rancho Cucamonga, California 91730.

#### Nature of the Action

5. Monoprice manufactures, imports, sells and/or offers to sell a 5.1 Hi-Fi Home Theatre Satellite Speakers & Subwoofer ("Product ID 9774") (hereinafter the "Infringing Theatre System"), which is a knock-off of API's famous ENERGY® TAKE CLASSIC™ 5.1 home theatre speaker system. *See Exhibit 2, Monoprice Product Description.*

6. Monoprice has (and continues to): (a) infringed API's United States Patent No. 6,725,967 (the "967 Patent") in violation of 35 U.S.C. § 271(a); (b) infringed API's famous and distinctive trade dress and committed unfair competition in violation of 15 U.S.C. § 1125(a); and (c) committed at least six separate counts of copyright infringement in violation of 17 U.S.C. § 501 *et seq.*

#### Jurisdiction and Venue

7. This Court has subject matter jurisdiction under one or more of the following statutes: 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1332 (diversity), and 28 U.S.C. § 1338 (patents, unfair competition, copyrights).

8. This Court has personal jurisdiction over Monoprice because, *inter alia*, Monoprice has committed, or aided, abetted, contributed to, or participated in,

acts of patent infringement, trade dress infringement, unfair competition and copyright infringement in the State of Indiana and in this Judicial District.

Monoprice has sold and shipped its Infringing Theatre System to customers in this Judicial District. *See Exhibit 3, Monoprice shipment to S.D. Indiana.*

9. Venue is proper in this Judicial District pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400(a) and (b) because Monoprice transacts business within this District by offering for sale and selling its Infringing Theatre System in Indiana.

#### **Factual Background**

10. API produces premium-quality audio products.

11. API is a leading global manufacturer of loudspeakers for audio and home theater use.

12. API has been a leader in audio research and development as well as in the engineering and manufacturing of speakers since 1973. API took what it learned from its involvement with some of the earliest Canadian studies on psychoacoustics, and proceeded to achieve pure, accurate sound reproduction in all of its ENERGY® speakers through three vital performance principles: flat on-axis frequency response with wide bandwidth; wide, constant dispersion; and low distortion and resonance. API's ENERGY® speakers deliver clear, honest sound more like your favorite band in concert, or a movie experience at the local theater.

13. Klipsch sells several product lines of audio speakers, including home theatre speaker systems, under the ENERGY® trademark and has significant

goodwill associated with products sold under the ENERGY® trademark. API and Klipsch have invested considerable time and money building the goodwill associated with the ENERGY® brand and enjoy wide-spread consumer recognition with its ENERGY® brand.

14. In approximately 1996, API introduced the ENERGY® TAKE 5™ home theatre speaker system. The ENERGY® TAKE 5™ home theatre speaker system included six speakers (four satellites, a center channel, and a subwoofer) manufactured using medium-density fiberboard cabinets and finished in a black laminate. The popular ENERGY® TAKE 5™ home theatre speaker system had a high volume of sales in both the United States and Canada. The ENERGY® TAKE 5™ home theatre speaker system was well-known as a high quality product for its price range.

15. In approximately 2000, API updated the ENERGY® TAKE 5™ home theatre speaker system and introduced the ENERGY® TAKE™ home theatre speaker system that also included six speakers (four satellites, a center channel, and a subwoofer). The ENERGY® TAKE™ home theatre system had a more modern look than the ENERGY® TAKE 5™ home theatre speaker system.

16. In approximately 2008, API launched the ENERGY® TAKE CLASSIC™ 5.1 home theatre speaker system illustrated in Figure 1.



Figure 1

The ENERGY® TAKE CLASSIC™ 5.1 also includes six speakers (four satellites, a center channel, and a subwoofer).<sup>1</sup> In July 2010, Klipsch began marketing and selling the ENERGY® TAKE CLASSIC™ 5.1 home theatre system pursuant to an exclusive license grant from API.

17. A review by CNET states that the ENERGY® TAKE CLASSIC™ 5.1 home theatre system “is one of those rare products that’s seemingly without compromise. The speakers also look fantastic, finished in an elegant piano black that belies the system’s budget price.” *See Exhibit 4*, [http://reviews.cnet.com/surround-speaker-systems/energy-take-classic-5/45057868\\_7-33310963.html](http://reviews.cnet.com/surround-speaker-systems/energy-take-classic-5/45057868_7-33310963.html).

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<sup>1</sup> 5.1 (“five point one”) is the common name for six channel surround sound multichannel audio systems. 5.1 is now the most commonly used layout in both commercial cinemas and home theaters. It uses five full bandwidth channels and one low-frequency effects channel (the “point one”). Dolby Digital, Dolby Pro Logic II, DTS, and SDDS are all commonly 5.1 systems. 5.1 is also the standard surround sound audio component of digital broadcast and music. [http://en.wikipedia.org/wiki/5.1\\_surround\\_sound](http://en.wikipedia.org/wiki/5.1_surround_sound)

18. The ENERGY® TAKE CLASSIC™ 5.1 home theatre system ranks 7th on Amazon's Best Sellers Rank in the "Speaker Systems" category. *See Exhibit 5*, p. 3. It has also obtained a 4.7 / 5.0 star ranking in Amazon's Average Customer Review. *Id.*

19. As shown in Figure 2, the four satellite speakers of the ENERGY® TAKE CLASSIC™ 5.1 home theatre system include a 0.75" aluminum tweeter and a 3-inch poly-titanium mid-bass driver in a high-gloss black cabinet.

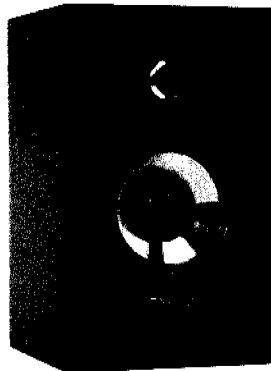


Figure 2

20. The ENERGY® TAKE CLASSIC™ 5.1 home theatre system's center channel speaker also includes a 0.75" aluminum tweeter and a 3-inch poly-titanium mid-bass driver in a high-gloss black cabinet illustrated in Figure 3.

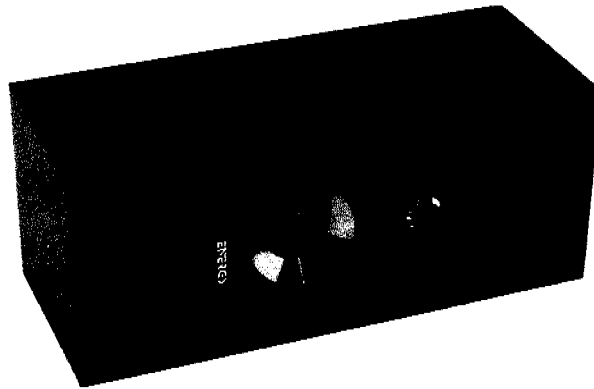


Figure 3

21. The unique teardrop shaped mounting bracket supports the tweeter and mid-bass driver of the four satellite speakers and the center channel speaker in the speaker's cabinets. The teardrop-shaped mounting bracket incorporates API's Convergent Source Module ("CSM") technology. API's CSM technology provides wide dispersion, low distortion and amazing midrange performance. API positions its speaker's midrange driver and tweeter in close proximity to one another to act as a single source, thereby increasing overall dispersion and reducing any lobing effect.

22. Consumers have come to associate API's teardrop shape as a source indicator that identifies API as a source of origin of the ENERGY® TAKE CLASSIC™ 5.1.

23. The subwoofer of the ENERGY® TAKE CLASSIC™ 5.1 home theatre system includes a 200-watt amplifier and driver capable of delivering deep bass and, as set forth below, incorporates patented technology of API.



Figure 4

24. API owns all right, title and interest in and to U.S. Patent No. 6,725,967 (the “’967 Patent”) entitled “Low Distortion Loudspeaker Cone Suspension” that issued on April 27, 2004. *See Exhibit 6, incorporated by reference herein.* The ’967 Patent covers technology that API refers to as its “Ribbed Elliptical Surround” technology. API’s patented Ribbed Elliptical Surround technology is incorporated into the subwoofer of the ENERGY® TAKE CLASSIC™ 5.1 home theatre system.

25. API’s patented Ribbed Elliptical Surround technology increases excursion, eliminates distortion and raises efficiency on woofers and subwoofers. The Ribbed Elliptical Surround encompasses the cone, allowing it to move identically in both directions, resulting in near zero distortion. Conventional designs are often plagued with surround dimpling, which causes the cone to radiate



in and out of phase and to distort. API's Ribbed Elliptical Surround designs have little if any dimpling, because the proprietary Ribbed Elliptical Surround technology allows for a larger cone surface, resulting in greater efficiency. This patented Ribbed Elliptical Surround design also lets the cone achieve greater peak to peak movement, thus allowing it to travel more than double the distance of the competition. These attributes enable ENERGY® TAKE CLASSIC™ 5.1 woofers and subwoofers to move incredible amounts of air allowing them to play lower frequencies with greater bass extension and fidelity.

26. Through API and Klipsch's extensive sales and promotion of the ENERGY® TAKE CLASSIC™ 5.1 home theatre system, consumers have come to associate the distinctive appearance of the ENERGY® TAKE CLASSIC™ 5.1 home theatre system with a single source, namely API. *See Exhibits 4 and 5.* The distinctive appearance of the ENERGY® TAKE CLASSIC™ 5.1 home theatre system constitute API's protectable, proprietary trade dress.

27. API's trade dress in its ENERGY® TAKE CLASSIC™ 5.1 includes (a) the overall appearance of the shape and design of the home theatre system, (b) the size, shape, and high gloss black color finish of the speakers, (c) API's teardrop shaped speaker mounting bracket on the satellite and center channel speakers that take advantage of API's CSM, and (d) API's incorporation of the Ribbed Elliptical Surround technology on the subwoofer (collectively referred to herein as "API's Trade Dress Rights"). API's Trade Dress Rights, along with the valuable goodwill

associated with both API's ENERGY® brand and its products are valuable assets of API.

28. Monoprice holds itself out as an e-Commerce leader specializing in cables, components and accessories for computer and consumer electronics in the United States, in the State of Indiana and in this District.

29. Monoprice is now offering for sale, selling, and/or importing the Infringing Theatre System, which has four satellite speakers, a center channel speaker, and a subwoofer that are almost identical to API's ENERGY® TAKE CLASSIC™ 5.1 home theatre system including its Trade Dress Rights as shown in Figure 5 and Exhibit 2.

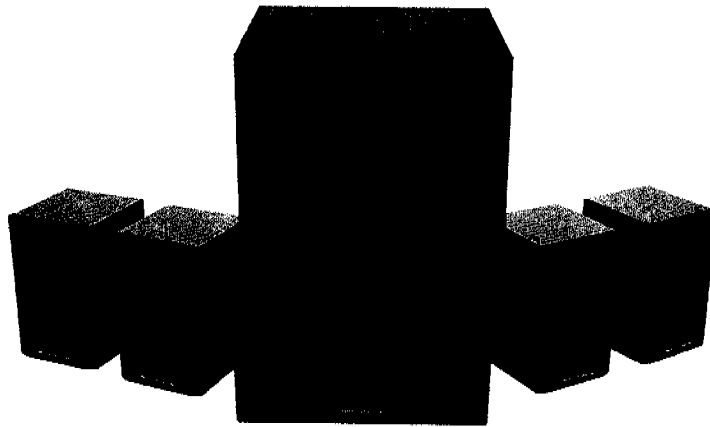


Figure 5

30. The Infringing Theatre System copies API's ENERGY® TAKE CLASSIC™ 5.1 home theatre system including API's Trade Dress Rights as defined above. Monoprice's Infringing Theatre System as a whole and each speaker

individually are virtually identical to API's ENERGY® TAKE CLASSIC™ 5.1 system.

31. As elaborated in Count VII below, the owner's manual for the Infringing Theatre System copies the substance of API's copyrighted owner's manual that is provided with its ENERGY® TAKE CLASSIC™ 5.1 home theatre system.

32. The back plate on the subwoofer of the Infringing Theatre System is virtually identical to the back plate on the subwoofer of the ENERGY® TAKE CLASSIC™ 5.1 home theatre system.

33. The satellite and center channel speakers include a teardrop shaped speaker mounting bracket that incorporates API's CSM, which as set forth above also serves as a source identifier of API.

34. The subwoofer of the Infringing Theatre System incorporates API's Ribbed Elliptical Surround technology and infringes the '967 Patent.

#### Causes of Action

#### Count I - Patent Infringement

35. API alleges and incorporates herein paragraphs 1-34 of this Complaint.

36. API owns by assignment of all right, title and interest in the '967 Patent, entitled "Low Distortion Loudspeaker Cone Suspension," which was duly and legally issued by the United States Patent & Trademark Office on April 27, 2004. *See Exhibit 6.*

37. In violation of 35 U.S.C. § 271(a), Monoprice is directly, indirectly and/or contributorily infringing the '967 Patent by making, having made, using, importing, offering for sale, selling and/or marketing the Infringing Theatre System.

38. Upon information and belief, based on the near-identical similarity between the Infringing Theatre System and API's ENERGY® TAKE CLASSIC™ 5.1 home theatre system, Monoprice knowingly and intentionally copied API's product, and is willfully infringing API's '967 Patent.

39. API has been damaged in an amount to be determined at trial.

40. Upon information and belief, this is an exceptional case within the meaning of 35 U.S.C. § 285, which warrants reimbursement of API's reasonable attorneys' fees and entitled to treble damages.

41. As a result of Monoprice's infringement, API has suffered irreparable harm constituting an injury for which it has no adequate remedy at law. Unless this Court enjoins Monoprice's conduct, API will continue to suffer irreparable harm.

## Count II

### Trade Dress Infringement and Unfair Competition

42. API alleges and incorporates herein paragraphs 1-41 of this Complaint.

43. For years API has a valid and protectable interest in its ENERGY® TAKE CLASSIC™ 5.1 home theatre system.

44. As a result of API's continuous and exclusive promotion and sales of the ENERGY® TAKE CLASSIC™ 5.1 home theatre system, together with prior versions of the ENERGY® TAKE™ home theatre systems in interstate commerce and the commercial success of the ENERGY® TAKE CLASSIC™ 5.1 home theatre system, API's Trade Dress Rights became distinctive and developed secondary meaning among relevant consumers as an identifier of the source of the ENERGY® TAKE CLASSIC™ 5.1 home theatre system.

45. The ENERGY® TAKE CLASSIC™ 5.1 home theatre system ranks 7th on Amazon's Best Sellers Rank in the "Speaker Systems" category. *See Exhibit 4, p. 3.* It also has obtained a 4.7 / 5.0 star ranking in Amazon's Average Customer Review. *Id.*

46. Monoprice's conduct is causing, and is likely to continue to cause in the future, confusion, mistake or deception as to the affiliation, connection or association of Monoprice with API, and as to the origin, sponsorship or approval of Monoprice's goods, in violation of Section 43 of the Lanham Act, 15 U.S.C. § 1125(a).

47. Monoprice's unauthorized and tortious conduct also has deprived, and will continue to deprive, API of the ability to control the consumer perception of its goods marketed under API's Trade Dress Rights, placing the valuable reputation and goodwill of API in the hands of Monoprice, over whom API has no control.

48. Upon information and belief, Monoprice's knowledge of API's Trade Dress Rights and reckless disregard for the likely confusion caused by its acts render this case exceptional under 15 U.S.C. § 1117.

49. As a result of the foregoing, API has been damaged in an amount to be determined at trial.

50. As a result of Monoprice's conduct, API has suffered irreparable harm constituting an injury for which it has no adequate remedy at law. Unless this Court enjoins Monoprice's conduct, API will continue to suffer irreparable harm.

### Count III - Copyright Infringement

#### ENERGY® TAKE CLASSIC™ 5.1 Home Theatre System

51. API alleges and incorporates herein paragraphs 1-50 of this Complaint.

52. API's ENERGY® TAKE CLASSIC™ 5.1 home theatre system, as a whole, constitutes an original work of authorship that includes four satellite, a center channel, and a subwoofer speaker.

53. On February 22, 2013, API filed a copyright application with the U.S. Copyright Office that was assigned Service Request #: 1-878518371 for its ENERGY® TAKE CLASSIC™ 5.1 home theatre system. *A true and correct copy of the electronic application together with the deposit is attached hereto as Exhibit 7.*

54. API owns all right, title and interest in and to the copyright in the ENERGY® TAKE CLASSIC™ 5.1 home theatre system.

55. Certain non-functional aspects of the ENERGY® TAKE CLASSIC™ 5.1 home theatre system have protection under the Copyright Act of the United States when considered as a whole, including, but not limited to, the high-gloss black color of the speakers, the teardrop shape of the speaker mounting bracket on

the four satellite and center channel speakers, the orientation and appearance of the tweeter and mid-bass speakers on the four satellite and center channel speakers, the shape of the output port, legs, and arrangement and layout of the back plate on the subwoofer, and so forth.

56. Monoprice had access to API's ENERGY® TAKE CLASSIC™ 5.1 home theatre system through its public availability and distribution in the United States.

57. As shown in Figure 6, Monoprice is selling and offering for sale its Infringing Theatre System that is substantially similar, if not identical, in visual appearance to API's ENERGY® TAKE CLASSIC™ 5.1 home theatre system.



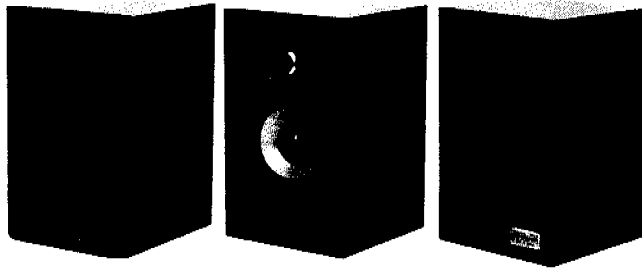


Figure 6

58. Monoprice has copied, and directly and/or contributorily infringed on the whole, API's copyrighted work, violating API's exclusive rights, provided in 17 U.S.C. § 501, *et seq.*

59. API does not know the full extent of Monoprice's infringement without discovery.

60. As a result of the foregoing, API has been damaged in an amount to be determined at trial.

61. As a result of Monoprice's conduct, API has suffered irreparable harm constituting an injury for which it has no adequate remedy at law. Unless this Court enjoins Monoprice's conduct, API will continue to suffer irreparable harm.

**Count III - Copyright Infringement**

**ENERGY® TAKE CLASSIC™ 5.1 Satellite Speaker**

62. API alleges and incorporates herein the preceding paragraphs 1-61 of this Complaint.



63. API's ENERGY® TAKE CLASSIC™ 5.1 Satellite Speaker® constitutes an original work of authorship. API uses the singular because the satellite speakers are the same, with each system having four identical satellite speakers.

64. On February 22, 2013, API filed a copyright application with the U.S. Copyright Office that was assigned Service Request #: 1-878518630 for its ENERGY® TAKE CLASSIC™ 5.1 Satellite Speaker. *A true and correct copy of the electronic application together with the deposit is attached hereto as Exhibit 8.*

65. API owns all right, title and interest in and to the copyright in the ENERGY® TAKE CLASSIC™ 5.1 Satellite Speaker.

66. Certain non-functional aspects of the ENERGY® TAKE CLASSIC™ 5.1 Satellite Speaker are entitled to protection under the copyright laws of the United States when considered as a whole, including, but not limited to, the high-gloss black color of the speaker, the teardrop shape of the speaker mounting bracket, the orientation and appearance of the tweeter and mid-bass speakers on the satellite speaker in relation to the teardrop shaped mounting bracket, the shape and configuration of the wire connectors and wall mounting brackets on the back of the speakers, and so forth.

67. Monoprice had access to API's ENERGY® TAKE CLASSIC™ 5.1 Satellite Speaker through its public availability and distribution in the United States.

68. As shown in Figure 7, Monoprice is selling and offering for sale its Infringing Theatre System that includes satellite speakers that are substantially

similar, if not identical, in visual appearance to API's ENERGY® TAKE CLASSIC™ 5.1 Satellite Speaker. The ENERGY® TAKE CLASSIC™ 5.1 is shown on the right in comparison with the infringing Monoprice matching component on the left.

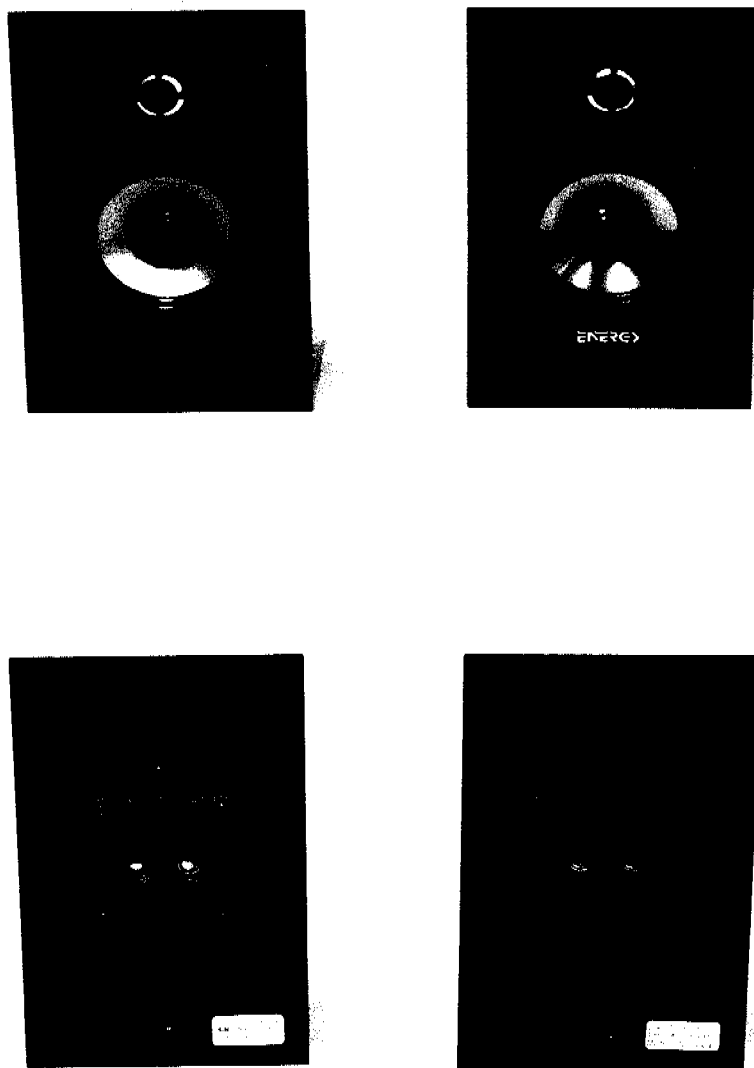


Figure 7

69. Monoprice has copied, and directly and/or contributorily infringed on the whole, API's copyrighted work, violating API's exclusive rights, provided in 17 U.S.C. § 501, *et seq.*

70. API cannot know the full extent of infringement without discovery.

71. As a result of the foregoing, API has been damaged in an amount to be determined at trial.

72. As a result of Monoprice's conduct, API has suffered substantial damage and irreparable harm constituting an injury for which it has no adequate remedy at law. Unless this Court enjoins Monoprice's conduct, API will continue to suffer irreparable harm.

#### Count IV - Copyright Infringement

##### ENERGY® TAKE CLASSIC™ 5.1 Center Channel Speaker

73. API alleges and incorporates herein paragraphs 1-72 of this Complaint.

74. API's ENERGY® TAKE CLASSIC™ 5.1 Center Channel Speaker constitutes an original work of authorship.

75. On February 22, 2013, API filed a copyright application with the U.S. Copyright Office that was assigned Service Request #: 1-878518630 for its ENERGY® TAKE CLASSIC™ 5.1 Center Channel Speaker. *A true and correct copy of the electronic application together with the deposit is attached hereto as Exhibit 9.*

76. API owns all right, title and interest in and to the copyright in the ENERGY® TAKE CLASSIC™ 5.1 Center Channel Speaker.

77. Certain non-functional aspects of the ENERGY® TAKE CLASSIC™ 5.1 Center Channel Speaker is entitled to protection under the copyright laws of the United States when considered as a whole, including, but not limited to, the high-gloss black color of the speaker, the teardrop shape of the speaker mounting bracket, the orientation and appearance of the tweeter and mid-bass speaker on the satellite speaker, the shape and configuration of the wire connectors and wall mounting brackets, and so forth.

78. Monoprice had access to API's ENERGY® TAKE CLASSIC™ 5.1 Center Channel Speaker through its public availability and distribution in the United States.

79. As shown in Figure 8, Monoprice is selling and offering for sale its Infringing Theatre System that includes a center channel speaker that is substantially similar, if not identical, in visual appearance to API's ENERGY® TAKE CLASSIC™ 5.1 Center Channel Speaker. The ENERGY® TAKE CLASSIC™ 5.1 is shown on the left in comparison with the infringing Monoprice matching component on the right.

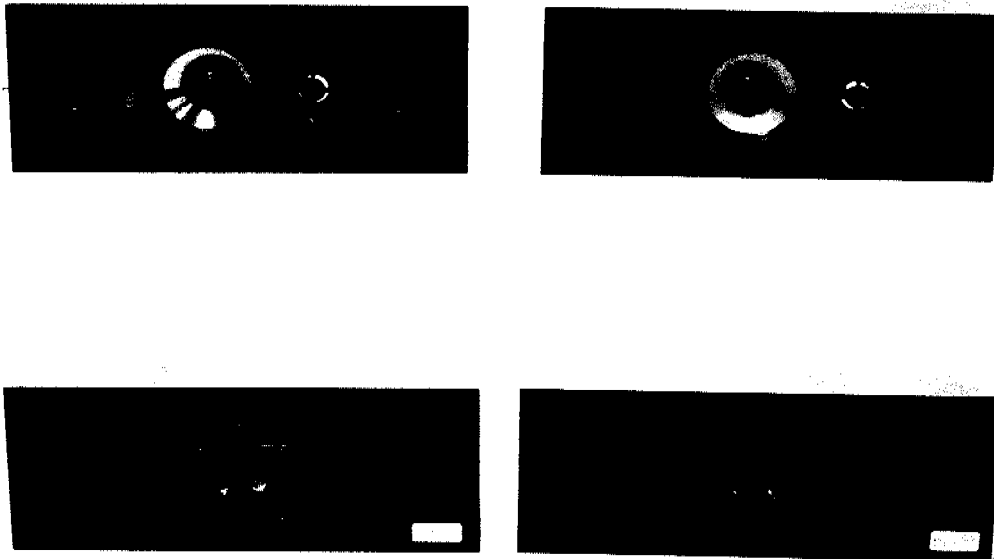


Figure 8

80. Monoprice has copied, and directly and/or contributorily infringed on the whole, API's copyrighted work, violating API's exclusive rights, provided in 17 U.S.C. § 501, *et seq.*

81. API does not know the full extent of infringement without discovery.

82. As a result of the foregoing, API has been damaged in an amount to be determined at trial.

83. As a result of Monoprice's conduct, API has suffered irreparable harm constituting an injury for which it has no adequate remedy at law. Unless this Court enjoins Monoprice's conduct, API will continue to suffer irreparable harm.

Count V - Copyright Infringement

ENERGY® TAKE CLASSIC™ 5.1 Subwoofer Speaker

84. API alleges and incorporates herein the preceding paragraphs 1-83 of this Complaint.

85. API's ENERGY® TAKE CLASSIC™ 5.1 Subwoofer Speaker constitutes an original work of authorship.

86. On February 22, 2013, API filed a copyright application with the U.S. Copyright Office that was assigned Service Request #: 1-878519117 for its ENERGY® TAKE CLASSIC™ 5.1 Subwoofer Speaker. *A true and correct copy of the electronic application together with the deposit is attached hereto as Exhibit 10.*

87. API owns all right, title and interest in and to the copyright in the ENERGY® TAKE CLASSIC™ 5.1 Subwoofer Speaker.

88. Certain non-functional aspects of the ENERGY® TAKE CLASSIC™ 5.1 Subwoofer Speaker is entitled to protection under the Copyright Act of the United States when considered as a whole, including, but not limited to, the high-gloss black color of the speaker, the shape, size and layout of the back-plate, the shape and size of the output port, the shape and size of the legs, and the overall appearance of the Subwoofer Speaker.

89. Monoprice had access to API's ENERGY® TAKE CLASSIC™ 5.1 Subwoofer Speaker through its public availability and distribution in the United States.

90. As shown in Figure 9, Monoprice is selling and offering for sale its Infringing Theatre System that includes a subwoofer speaker that is substantially similar in visual appearance to API's ENERGY® TAKE CLASSIC™ 5.1 Subwoofer Speaker. The ENERGY® TAKE CLASSIC™ 5.1 is shown on the left in comparison with the infringing Monoprice matching component on the right.

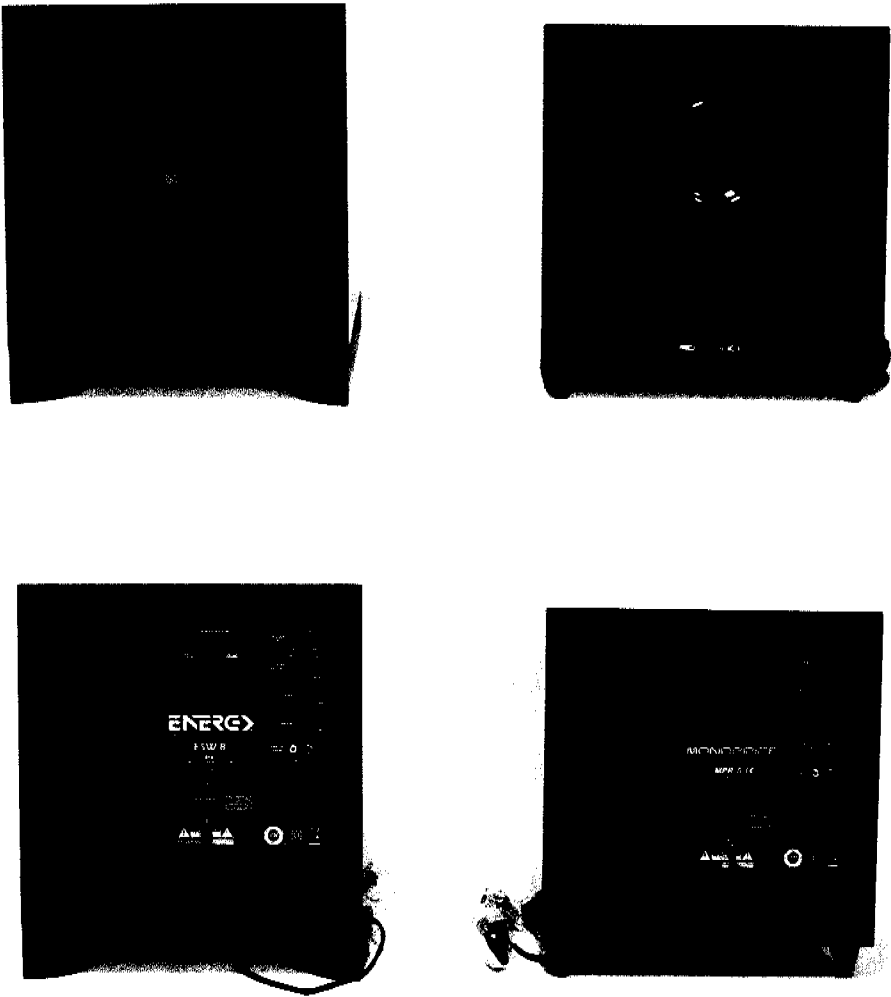


Figure 9

91. By the foregoing acts, Monoprice has copied, and directly and/or contributorily infringed on the whole, API's copyrighted work, violating API's exclusive rights, provided in 17 U.S.C. § 501, *et seq.*

92. API does not know the full extent of infringement without discovery.

93. As a result of the foregoing, API has been damaged in an amount to be determined at trial.

94. As a result of Monoprice's conduct, API has suffered irreparable harm constituting an injury for which it has no adequate remedy at law. Unless this Court enjoins Monoprice's conduct, API will continue to suffer irreparable harm.

#### Count VI - Copyright Infringement

##### API's ENERGY® TAKE CLASSIC™ 5.1 Subwoofer Back-plate

95. API alleges and incorporates herein paragraphs 1-94 of this Complaint.

96. API's ENERGY® TAKE CLASSIC™ 5.1 Subwoofer Back-plate constitutes an original work of authorship.

97. On February 22, 2013, API filed a copyright application with the U.S. Copyright Office that was assigned Service Request #: 1-878519094 for its ENERGY® TAKE CLASSIC™ 5.1 Subwoofer Back-plate. *A true and correct copy of the electronic application together with the deposit is attached hereto as Exhibit 11.*



98. API owns all right, title and interest in and to the copyright in the ENERGY® TAKE CLASSIC™ 5.1 Subwoofer Back-plate.

99. Monoprice had access to API's ENERGY® TAKE CLASSIC™ 5.1 Subwoofer Back-plate through its public availability and distribution in the United States.

100. As shown in Figure 10, Monoprice is selling and offering for sale its Infringing Theatre System that includes a subwoofer back-plate that is substantially similar, if not virtually identical, in visual appearance to API's ENERGY® TAKE CLASSIC™ 5.1 Subwoofer Back-plate. The ENERGY® TAKE CLASSIC™ 5.1 is shown on the right in comparison with the infringing Monoprice matching component on the left.

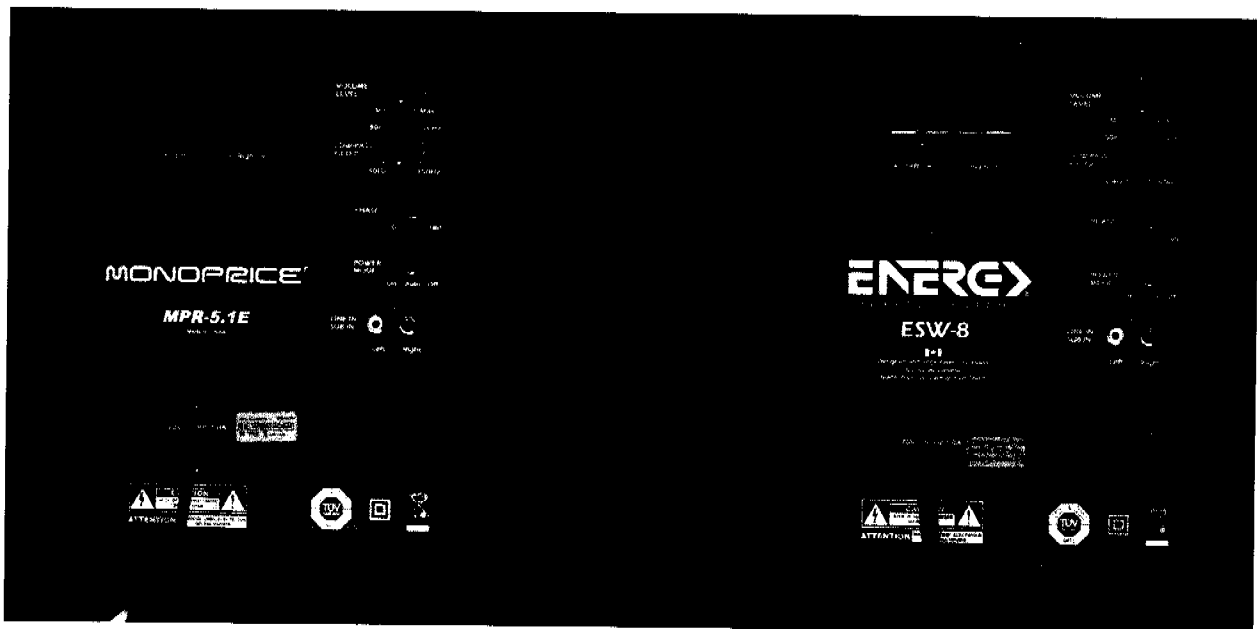


Figure 10

101. As shown by the duplication and location of each element on the backplate (WMMA), Monoprice has copied, and directly and/or contributorily

infringed on the whole, API's copyrighted work, violating API's exclusive rights, provided in 17 U.S.C. § 501, *et seq.*

102. API does not know the full extent of infringement without discovery.

103. As a result of the foregoing, API has been damaged in an amount to be determined at trial.

104. As a result of Monoprice's conduct, API has suffered irreparable harm constituting an injury for which it has no adequate remedy at law. Unless this Court enjoins Monoprice's conduct, API will continue to suffer irreparable harm.

#### Count VII - Copyright Infringement

##### ENERGY® TAKE CLASSIC™ 5.1 Owner's Manual

105. API alleges and incorporates herein the preceding paragraphs 1-104 of this Complaint.

106. API's ENERGY® TAKE CLASSIC™ 5.1 Owner's Manual constitutes an original work of authorship.

107. On February 22, 2013, API filed a copyright application with the U.S. Copyright Office that was assigned Service Request #: 1-878519198 for its ENERGY® TAKE CLASSIC™ 5.1 Owner's Manual. *A true and correct copy of the electronic application is attached hereto as Exhibit 12 and a copy of the ENERGY® TAKE CLASSIC™ 5.1 Owner's Manual is attached hereto as Exhibit 13.*<sup>2</sup>

108. API owns all right, title and interest in and to the copyright in the ENERGY® TAKE CLASSIC™ 5.1 Owner's Manual.

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<sup>2</sup> Pages 5-28 have been deleted as they replicate pages 2-4 in several different languages.

109. Monoprice had access to API's ENERGY® TAKE CLASSIC™ 5.1 Owner's Manual through its public availability and distribution in the United States.

110. Monoprice is selling and offering for sale its Infringing Theatre System that includes an Owner's Manual that is substantially similar, if not identical, to API's ENERGY® TAKE CLASSIC™ 5.1 Owner's Manual. *See Exhibit 14.* A comparison of the two owner's manuals reveals that Monoprice's Owner's Manual is a copy of API's ENERGY® TAKE CLASSIC™ 5.1 Owner's Manual. *Compare Exhibit 13 and Exhibit 14.* In fact, on page 8 of Monoprice's Owner's Manual, Monoprice, while copying API's ENERGY® TAKE CLASSIC™ 5.1 Owner's Manual, forgot to remove API's "ENERGY" mark in the section entitled "CONNECTING YOUR ENERGY SUBWOOFER". *See Exhibit 14, Page 8.*

111. By the foregoing acts, Monoprice has copied, and directly and/or contributorily infringed on the whole, API's copyrighted work, violating API's exclusive rights, provided in 17 U.S.C. § 501, *et seq.*

112. API does not know the full extent of infringement without discovery.

113. As a result of the foregoing, API has been damaged in an amount to be determined at trial.

114. As a result of Monoprice's conduct, API has suffered irreparable harm constituting an injury for which it has no adequate remedy at law. Unless this Court enjoins Monoprice's conduct, API will continue to suffer irreparable harm.

Prayer for Relief

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

(a) Judgment that Monoprice's subwoofer infringes one or more claims of the '967 Patent and that Monoprice's making, using, offering to sell, or selling in the United States, or importing into the United States, the subwoofer infringes the '967 Patent;

(b) Judgment that Monoprice's Infringing Theatre System infringes API's Trade Dress Rights;

(c) Judgment that Monoprice committed unfair competition by selling and offering for sale the Infringing Theatre System;

(d) Judgment that Monoprice has infringed all six copyrights owned by API as alleged herein above;

(e) An award of damages adequate to compensate API for Monoprice's infringement of the '967 Patent pursuant to 35 U.S.C. § 284;

(f) An award of damages adequate to compensate API for Monoprice's infringement of API's Trade Dress Rights and acts of unfair competition;

(g) An award of damages adequate to compensate API for Monoprice's infringement of all six copyrights owned by API and infringed by Monoprice;

(h) An award of statutory damages up to three times the amount found or assessed by the Court in API favor and against Monoprice for its willful and deliberate infringement of the '967 Patent, API's Trade Dress Rights, Monoprice's acts of unfair competition, and Monoprice's acts of copyright infringement complained of herein;

(i) An Order permanently enjoining Monoprice, and its affiliates and subsidiaries, and each of their officers, agents, servants and employees, from making, using, offering to sell, or selling in the United States, or importing into the United States any product that infringes the '967 Patent until after the expiration date of the '967 Patent;

(j) An Order permanently enjoining Monoprice, and its affiliates and subsidiaries, and each of their officers, agents, servants and employees, from making, using, offering to sell, or selling in the United States, or importing into the United States any product that infringes API's Trade Dress Rights, or any confusingly similar product incorporating a colorable imitation of API's Trade Dress Rights or from otherwise competing unfairly with API;

(k) An Order permanently enjoining Monoprice, and its affiliates and subsidiaries, and each of their officers, agents, servants and employees, from making, using, offering to sell, or selling in the United States, or importing into the United States any product that infringes any of API's copyrights as alleged herein;

(k) An Order directing Monoprice to file with this Court and serve on API's attorneys, thirty (30) days after the date of entry of any injunction, a report in writing and under oath setting forth in detail the manner and form in which Monoprice has complied with the injunction;

(l) An award to API of its attorneys' fees, costs and expenses incurred in prosecuting this action; and

(m) All other just and proper relief.

Respectfully submitted,

Dated: March 15, 2013



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