HON. RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT SEATTLE

NO. 2:06-CV-01811-RSM

JURY DEMAND

FIRST AMENDED COMPLAINT

DALI-USA, Inc., a Washington corporation,

Plaintiff,

vs.

ILONA KUCHERENKO, a person of unknown origin, d/b/a AUDIOPHILE LIQUIDATOR; and JOHN DOES 1-5, persons or entities of unknown origin,

Defendants.

DALI-USA, INC., a Washington corporation, upon personal information as to its own activities, and upon information and belief as to the activities of others, hereby alleges for its complaint against Ilona Kucherenko (*"Kucherenko*"), and John Does (1-5) (*"John Does*"), as follows:

I. NATURE OF THE CASE

1.1. This is an action for trademark and copyright infringement.

1.2. Plaintiff DALI-USA, Inc. ("DALI") is an indirect subsidiary, and exclusive United States licensee, of AudioNord Danmark, owner of the valuable DALITM trademark for home audio goods and services. DALI also owns the copyrights in photographs of its products and the descriptions and specifications of those products.

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1.3. Defendants are infringing upon DALI's rights in the DALI[™] trademark (the "Mark"). Defendants operate various websites (the "Infringing Sites") which advertise and take orders for DALI products, but deliver non-DALI branded products or attempt to persuade the customers to accept non-DALI replacement products. Defendants also use the Mark in a variety of ways in the Infringing Sites and in advertising these sites, despite having no relationship to Dali or any authorization to use the Mark. Defendants are also infringing on DALI's copyrighted material (the "Material") by reproducing copies or derivative works of such material on the Infringing Sites.

II. PARTIES

2.1. Plaintiff DALI-USA, Inc. is a corporation organized and existing under the laws of the State of Washington, having its principal place of business located at 3957 Irongate Road, Bellingham, Washington, 98226.

2.2. Defendant Ilona Kucherenko is a person of unknown origin who purports to do business under the Audiophile Liquidator name at 8491 W. Sunset Boulevard #438, Los Angeles, CA 90069.

2.3. Defendants John Does are persons or entities of unknown domicile who are working with Kucherenko with regards to the actions alleged herein.

III. JURISDICTION AND VENUE

3.1. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331, because the causes of action alleged herein arise under the Lanham Act, 15 U.S.C. § 1051, *et seq.* and the U.S. Copyright Act, 17 U.S.C. § 101, *et seq.* The Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

3.2. This Court has personal jurisdiction over Defendants because
Defendants took acts directed to the State of Washington, purposefully availed
themselves to the laws of the State of Washington, and transacted business with,
and sold products and services to, customers located in the State of Washington.

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3.3. Venue for this action is proper under 28 U.S.C. § 1391(b) in the United States District Court for the Western District of Washington because this is the judicial district in which a substantial part of the events or omissions giving rise to the claims alleged herein occurred.

IV. FACTS

A. DALI – Background

4.1. DALI is the preeminent producer of speakers and home audio products. DALI is a wholly owned subsidiary of DALI Denmark, which in turn is wholly owned by Audionord International (AudioNord Danmark).

4.2. DALI¹ has produced speakers since 1983, and over the years has developed a reputation for producing the highest quality audio products. DALI is a marquee name in the home audio/speaker market.

4.3. DALI's parent company sells and distributes its products on a worldwide basis. DALI is the United States arm of the company, which, as the exclusive US licensee for the Mark, handles the marketing and distribution of those products in the United States.

4.4. DALI takes substantial efforts to perfect and protect its intellectual property. Its brand is protected by the "DALI" trademark (U.S. Reg. No. 2,357,877) (the Mark). It strictly controls the licensing of the Mark and the distributors who are authorized to sell or distribute DALI products. Only these authorized distributors are licensed to use the Mark, and their use of the Mark is strictly limited.

4.5. Similarly, DALI expends significant resources photographing and creating marketing materials (the Materials) for its products.

4.6. The photographs are professionally taken in a manner that highlight the design of the products. Similarly, the descriptions, brochures, and the

¹ DALI refers to DALI-USA, INC. or DALI Denmark, as the context requires. DALI-USA, Inc. handles distribution in the United States for DALI Denmark and is the exclusive United States licensee for the Mark.

marketing materials are crafted in a manner that accentuates the features of the
 products, consistent with the overall marketing message.

4.7. DALI owns the copyrights in the Materials, and licenses the Materials to authorized dealers and distributors. True and correct copies of copyright registrations in the Materials are attached hereto as *Exhibit A*.

B. Acts of Infringements Perpetrated Via the Infringing Sites

4.8. In 2006, DALI began receiving complaints from customers and authorized distributors regarding various web sites which purported to offer DALI products at heavily discounted prices (the Infringing Sites).

4.9. Numerous customers have complained to DALI and DALI's authorized distributors that they ordered the DALI products advertised on the Infringing Sites only to have the Infringing Sites either ship a replacement non-DALI product, or "suggest an alternative".

4.10. Dealers have similarly complained that customers have inquired with them as to the availability of DALI products at the pricing listed on the Infringing Sites when no such products are offered at the Infringing Sites (either at that price or otherwise).

4.11. In short, the Infringing Sites do not actually offer DALI products, but advertise that they do.

4.12. The Infringing Sites all appear to be operated by the same individuals. The Infringing Sites contain the name "Audiophile Liquidator" (or some variant) in their text somewhere, and sell virtually the same products.

4.13. The Infringing Sites do not list a street address anywhere on the Infringing Sites.

4.14. The domain names (the "Infringing Domains") through which the
Infringing Sites are made available are all registered to Kucherenko. The
Infringing Domains were registered on an anonymous basis by Kucherenko through

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"proxy registration services" provided by Domains By Proxy, Inc. ("**DBP**").²

4.15. Screenshots of one of the Infringing Sites, which purports to offer DALI products are attached hereto as *Exhibit B*.

4.16. Defendants used, and continue to use, DALI's trademarked and copyrighted materials (the Mark and the Materials) in the context of a classic "bait and switch" scheme.

4.16. The Infringing Sites are not operated by authorized retailers of DALI products, and do not have a license to use the Mark or the Materials.

4.17. In engaging in this bait and switch scheme, Defendants materially injured, and continue to injure, DALI's brand and goodwill in the Mark, and its rights in the Materials.

V. FIRST CAUSE OF ACTION: FALSE DESIGNATION OF ORIGIN AND UNFAIR COMPETITION (15 U.S.C. § 1125)

5.1. DALI incorporates the allegations set forth in paragraphs 1.1 through4.17 above as though fully set forth herein.

5.2. By their use of the DALI[™] Mark on the Infringing Sites, Defendants used and continue to use DALI[™] as a false designation of origin in such a manner which is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Defendants with DALI.

5.3. By their use of the DALI[™] Mark, Defendants used and continue to use DALI[™] as a false designation of origin in such a manner which is likely to cause confusion, or to cause mistake, or to deceive as to the origin, sponsorship, or approval of Defendants' goods or services, or commercial activities, by DALI.

5.4. Defendants' actions violate DALI's rights under 15 U.S.C. § 1125(a).

5.5. Defendants' actions, as described herein, caused, and continue to

² Dali originally named DBP as a party. DBP divulged the identity of the registrant for all of the Infringing Domains (Kucherenko) and placed the Infringing Domains on hold. Consequently, DBP is no longer named as a party in the lawsuit.

cause, substantial damages to DALI and its interest in the Mark.

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VI. SECOND CAUSE OF ACTION: FALSE ADVERTISING (15 U.S.C. § 1125)

6.1. DALI incorporates the allegations set forth in paragraphs 1.1 through5.5 above as though fully set forth herein.

6.2. Defendants made false or misleading statements (via the Infringing Sites) regarding DALI and its products and services, and regarding the Mark.

6.3. Defendants' statements actually deceive or are likely to deceive a substantial segment of the advertisement's audience.

6.4. Defendants' statements concerned a subject material to the decision of consumers to purchase the goods.

6.5. Defendants' statements relate to goods and services entering interstate commerce.

6.6. Defendants' statements resulted in actual or probable injury to DALI. The statements violate DALI's rights under 15 U.S.C. § 1125.

VII. THIRD CAUSE OF ACTION: COPYRIGHT INFRINGEMENT (17 U.S.C. § 101)

7.1. DALI incorporates the allegations set forth in paragraphs 1.1 through6.6 above as though fully set forth herein.

7.2. DALI has registered copyrights in the photographs of its products, and in marketing brochures and product libraries, which are displayed on Dali's website (the "*Dali Site*") and the descriptions of the products (*i.e.*, the Materials).

7.3. Defendants had access to the Dali Site, including the Materials.

7.4. Defendants copied and/or created derivative works of the photographs and the Materials.

7.5. Defendants are not licensed or authorized by DALI to use Dali's copyrighted materials.

7.6. The foregoing acts of Defendants constitute infringement of DALI's
 exclusive rights in its copyrighted works under 17 U.S.C. § 106.

3 7.7. DALI has been and will continue to be damaged as a result of
4 Defendants' unlawful infringement of DALI's copyrighted works in an amount to be
5 proven at trial.

7.8. Upon information and belief, Defendants' actions were willful and wanton, and performed in blatant disregard of DALI's rights.

VIII. FOURTH CAUSE OF ACTION: TRADEMARK INFRINGEMENT (15 U.S.C. §§ 1051, et seq.)

8.1. DALI incorporates the allegations set forth in paragraphs 1.1 through7.8 above as though fully set forth herein.

8.2. DALI has all rights (as exclusive US licensee) in the Mark.

8.3. Defendants used the Mark in commerce (including on the Infringing Sites).

8.4. Defendants' use of the Mark was and is connected with the sale, distribution, or advertising of goods and services.

8.5. Defendants used the Mark in a manner likely to cause consumer confusion.

8.6. Defendants' use of the Mark resulted in injury to DALI.

IX. FIFTH CAUSE OF ACTION: UNFAIR BUSINESS PRACTICES (RCW § 19.86.090)

9.1. DALI incorporates the allegations set forth in paragraphs 1 though 8.6 above as though fully set forth herein.

9.2. Defendants' actions herein constitute unfair or deceptive acts or practices in violation of RCW §19.86, *et seq*.

27 9.3. Defendants' actions occurred in the context of Defendants' trade or28 business.

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9.4. Defendants' actions affect the public interest – there is a strong public
 interest in a marketplace which is free of misleading information. Defendants'
 actions contravene this public interest.

9.5. DALI has been injured in its business or property as a result ofDefendants' actions. Defendants' misappropriates DALI's goodwill and customerbase.

9.6. Defendants' actions caused DALI's injury.

9.7. Pursuant to RCW § 19.86.090, therefore, DALI is entitled to actual damages in amount to be factually determined, treble damages, and costs of suit, including reasonable attorneys' fees.

X. JURY DEMAND

Pursuant to Federal Rule of Civil Procedure Rule 38(b), DALI demands a trial by jury as to all issues so triable in this action.

XI. RELIEF REQUESTED

WHEREFORE, DALI prays for the following relief:

1. Injunctive Relief. That this Court grant an injunction enjoining and restraining Defendants, as well as their partners, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise from: (1) directly or indirectly using the Mark, or any other trademark or any other mark, symbol, device, word, domain name, fictitious business name, or name similar to the Mark (DALITM) which is likely to cause confusion or in a manner that violates DALI's rights under the Lanham Act; (2) reproducing, displaying, broadcasting, distributing, performing, or taking any other action reserved for the copyright owner of any of the Materials; and (3) continuing any and all acts of unfair competition as herein alleged.

2. <u>Money Damages in the Amount of the Losses of DALI</u>. That Defendants be required to pay DALI for all damages sustained by DALI by reason

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(206) 529-4827

of Defendants' improper acts complained herein. 1

 $\mathbf{2}$ 3. Money Damages in the Amount of the Profits of Defendants. That Defendants be required to pay DALI for all revenue Defendants or their agents or licensees generated by reason of Defendants' improper acts complained herein.

4. Statutory Damages. That, pursuant to the Lanham Act, and Copyright Act, and Washington Consumer Protection Act, the Court award DALI statutory damages (to the extent available).

5. <u>Costs</u>. That, pursuant to the Lanham Act, Copyright Act, and Washington Consumer Protection Act, and the principles of equity, the Court award costs of this action to DALI.

6. <u>Infringing Domains</u>. That Defendants be required to disgorge the Infringing Domains to DALI.

7. <u>Attorney's Fees</u>. That, pursuant to the Lanham Act, Copyright Act, and Washington Consumer Protection Act, the Court award DALI its reasonable attorney's fees incurred.

8. <u>Other Equitable Relief</u>. That the Court grant such other and further relief as it shall deem just.

DATED this 26 th day of I	February, 2007.	
By:	BALASUBRAMANI LAW Wenkat Balasubramani (WSB. 8426 40 th Ave SW Seattle WA, 98136 venkat@balasubramani.com Fax: 206 260-3966 Attorneys for Plaintiff DALI-USA, INC.	A # 28269)
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EXHIBIT A

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

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Register of Copyrights, United States of America

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^{*17} USC \$508(e): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

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Register of Copyrights, United States of America

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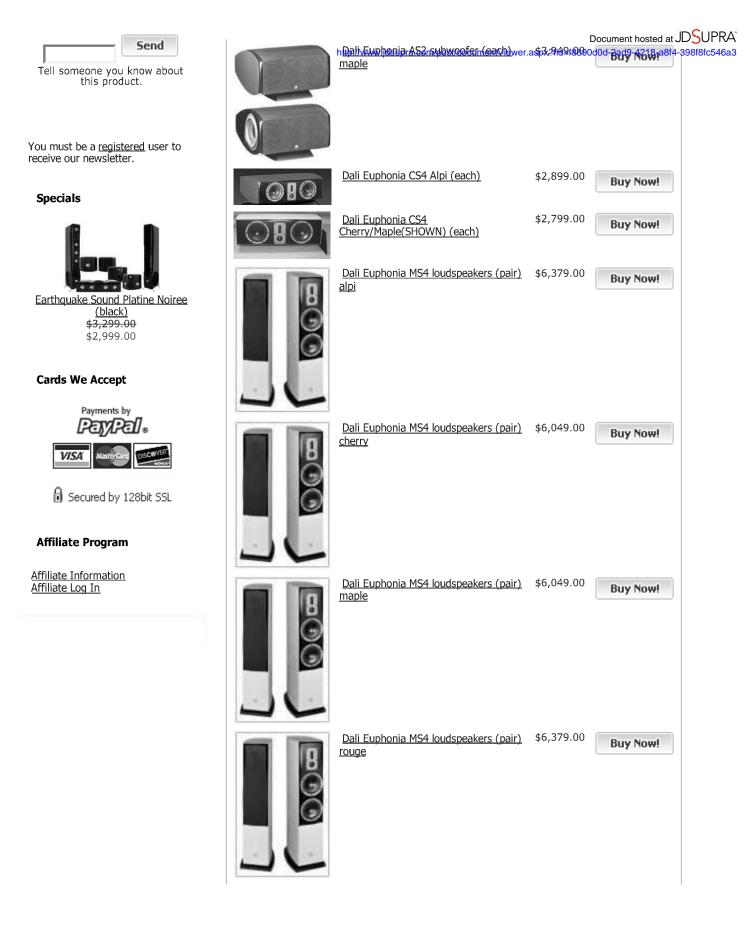
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Corrificate will be mailed in window envelope	NDENCE Give name and addre W W. JELLETT, HUGHE IDIAN STREET, SUITE HAM, WA 98226 rime telephone number ► 360-64 ett@inventionlaw.com FION* 1, the undersigned, herel Intified in this application and that pplication are correct to the best of red name and date V if this applic W W. JELLETT Handwritten signerity HUGHES LAW FIRM, Number/Street/Apt V	ss to which corres, S LAW FIRM 302 7-1296 by certify that 1 am Check on the statements in the statements in finy knowledge. Cation gives a date Della PLLC BET, SUITE 3	pondence about this app A, PLLC A the hy one hade authou of publication in space	plication should be sent. N Fax number > 3 r copyright claimant t of exclusive right(s) rized agent of DALL USA Name of author or other co	ame / Address / Apt / City / Si 360-671-2489 A pyright claimant, or owner of exc before that date. Date DECEMBE Complete all nec- Sign your all pplice SEND ALL 3 E Norrefundable 1 Application form 2. Norrefundable 1 Order payable to A 3. Deposit matche	tate/Zip ▼ b tate/Zip ▼ b suske right(s) ▲ R 18, 2006 R 18, 2006 R 18, 2006 Solution to pace 8 tate / Zip ▼ b

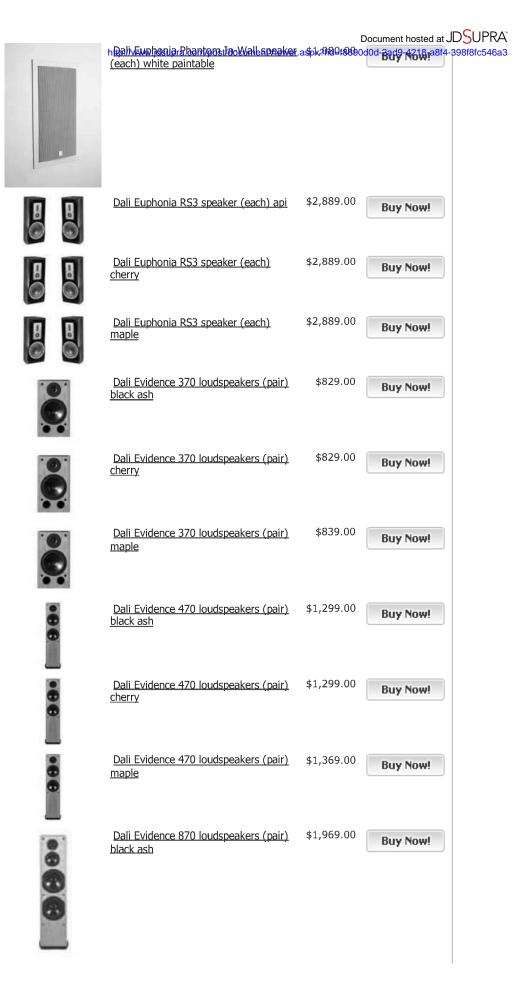
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•••	Dali Evidence 870 loudspeakers (pair) maple	\$2,039.00	Buy Now!	
.0	<u>Dali Evidence C70 center speaker</u> (each) black ash	\$549.00	Buy Now!	
	<u>Dali Evidence C70 center speaker</u> (each) cherry	\$549.00	Buy Now!	
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	<u>Dali Helicon 300 loudspeakers (pair)</u> <u>cherry</u>	\$2,109.00	Buy Now!	
	<u>Dali Helicon 300 loudspeakers (pair)</u> rose nut	\$2,109.00	Buy Now!	
	<u>Dali Helicon 400 loudspeakers (pair)</u> <u>cherry</u>	\$3,019.00	Buy Now!	
	<u>Dali Helicon 400 loudspeakers (pair)</u> rosenut	\$3,019.00	Buy Now!	

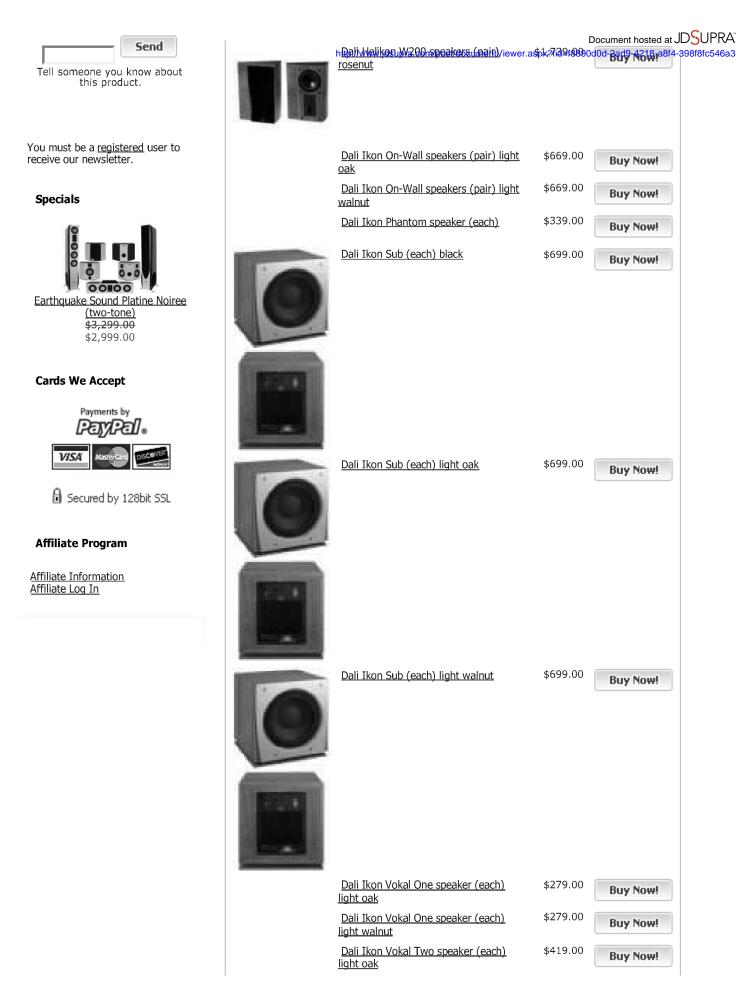
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	n <u>Baliwieliçon,800-loudspeakers (aair)</u> <u>cherry</u>	Document hosted at wer.a\$\$7,510910800000-8219 42081814	JDSUPRA [®]
	<u>Dali Helicon 800 loudspeakers (pair)</u> rosenut	\$4,569.00 Buy Now!	
010	Dali Helicon C200 speaker (each) cherry	\$1,359.00 Buy Now!	
010	<u>Dali Helicon C200 speaker (each)</u> rosenut	\$1,359.00 Buy Now!	
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<u>Dali Ikon1 lo</u> <u>walnut</u>
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<u>Dali Ikon5 lo</u> oak
<u>Dali Ikon5 lo</u> <u>walnut</u>
<u>Dali Ikon6 lo</u> <u>oak</u>

<u>Dali Ikon1 loudspeakers (pair) light</u> oak <u>Dali Ikon1 loudspeakers (pair) light</u> walnut	\$559.00 Buy Now! \$559.00 Buy Now!
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<u>Dali Ikon6 loudspeakers (pair) liqht</u> <u>oak</u>	\$1,120.00 Buy Now!

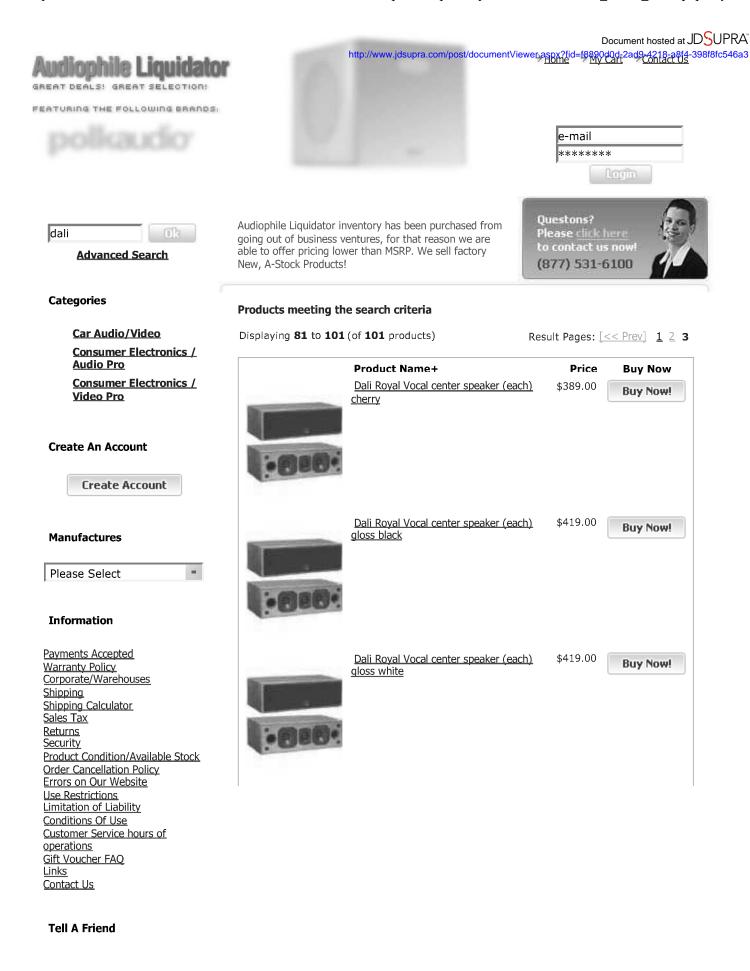


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 n <u>Pali, Riang: Noble, Joudspeakers, (pair)</u> , w <u>aluminum</u>	er.a\$pi,/4@9i&800	10d-Barg-426812814-	398f8fc546a3
<u>Dali Piano Vocal center speaker</u> (each) aluminum	\$429.00	Buy Now!	
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: • •	h <u>BalivRoval-Menuet-Meloudspeakers</u> /iewer.a (pair) gloss black	asp\$f6129f86600d0d-Bary 4218ia8f4-398f8f	[:] c546a3
: • •	<u>Dali Royal Menuet II loudspeakers</u> (pair) gloss white	\$699.00 Buy Now!	
. 0	<u>Dali Royal Scepter loudspeakers (pair)</u> <u>cherry</u>	\$769.00 Buy Now!	
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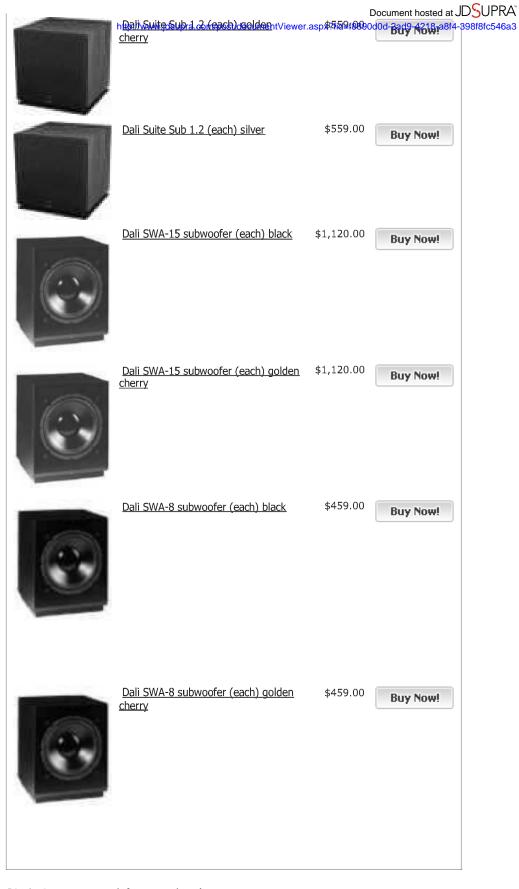
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	h <u>RalisSuiterClosscenterospeaken (each)</u> ver.a silver	Document hosted at JDSU	IPRA
10-01	h <mark>Qali.Suite.CQ.&.center.speaker.(eaca)</mark> ver.a <u>silver</u>	1sp,\$3 ² 9199900000- 금급다9 14218 128f4-398f8f6	546a3
9	<u>Dali Suite R 0.7 speakers (pair) golden</u> <u>cherry</u>	\$419.00 Buy Now!	
0	<u>Dali Suite R 0.7 speakers (pair) silver</u>	\$419.00 Buy Now!	
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