

**UNITED STATES INTERNATIONAL TRADE COMMISSION**  
**Washington, D.C.**

**In the Matter of**

**CERTAIN FOAM FOOTWEAR**

**Inv. No. 337-TA-567**

**NOTICE OF INVESTIGATION**

AGENCY: U.S. International Trade Commission

ACTION: Institution of investigation pursuant to 19 U.S.C. § 1337

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on March 31, 2006, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, on behalf of Crocs, Inc. of Niwot, Colorado. On April 27, 2006, the Commission granted complainant's request for a postponement of the Commission's determination whether to institute an investigation in order for complainant to file an amended complaint. The amended complaint was filed on April 27, 2006. The amended complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain foam footwear by reason of infringement of (1) claims 1 and 2 of U.S. Patent No. 6,993,858, (2) U.S. Design Patent No. D517,789, (3) and the Crocs Trade Dress. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent general exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Room 112, Washington, D.C. 20436, telephone 202-205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server at <http://www.usitc.gov>. The public record for this

investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

FOR FURTHER INFORMATION CONTACT: David H. Hollander, Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205-2746.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.10 (2005).

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on May 4, 2006, ORDERED THAT –

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine:

(a) whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain foam footwear by reason of infringement of claims 1 or 2 of U.S. Patent No. 6,993,858, or U.S. Design Patent No. D517,789, and whether an industry in the United States exists as required by subsection (a)(2) of section 337; or

(b) whether there is a violation of subsection (a)(1)(A) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain foam footwear by reason of infringement of Crocs' trade dress, the threat or effect of which is to destroy or substantially injure an industry in the United States.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is –

Crocs, Inc.  
6273 Monarch Park Place  
Niwot, Colorado 80503

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Australia Unlimited, Inc.  
2638 E. Marginal Way S.  
Seattle, WA 98134

Cheng's Enterprises Inc.  
68 Broad Street  
Carlstadt, NJ 07072

Collective Licensing International, LLC  
800 Englewood Parkway  
Englewood, CO 80110

D. Myers & Sons, Inc.  
2020 Sherwood Avenue  
Baltimore, MD 21218

Double Diamond Distribution Ltd.  
3715A Thatcher Avenue  
Saskatoon, SK., Canada S7R 1B8

Effervescent Inc.  
24 Scott Road  
Fitchburg, MA 01420

Gen-X Sports, Inc.  
18601 Wilmington Avenue  
Carson, CA 90796

Holey Soles Holding Ltd.  
1628 West 75<sup>th</sup> Avenue  
Vancouver, Canada V6P 6G2

Inter-Pacific Trading Corp.  
2257 Colby Avenue  
Los Angeles, CA 90064

Pali Hawaii  
501 Sumner St., Suite 613  
Honolulu, HI 96817

Shaka Shoes  
77-6360 Halawai Place  
Kailua-Kona, HI 96740

(c) The Commission investigative attorney, party to this investigation, is David H. Hollander, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, S.W., Suite 401, Washington, D.C. 20436.

(3) For the investigation so instituted, the Honorable Charles E. Bullock is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.13. Pursuant to 19 C.F.R. §§ 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondents, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or cease and desist order or both directed against the respondent.

By order of the Commission.

Marilyn R. Abbott  
Secretary to the Commission

Issued: May 8, 2006