

**UNITED STATES INTERNATIONAL TRADE COMMISSION**  
**Washington D.C. 20436**

\_\_\_\_\_ )  
**In the Matter of** )

**CERTAIN FOAM FOOTWEAR** )

) **Inv. No. 337-TA-567**  
\_\_\_\_\_ )

**NOTICE OF COMMISSION DECISION TO AFFIRM AN INITIAL DETERMINATION  
EXTENDING THE TARGET DATE FOR COMPLETION OF THE INVESTIGATION**

AGENCY: U.S. International Trade Commission

ACTION: Notice

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to affirm an initial determination (“ID”) of the presiding administrative law judge (“ALJ”) extending the target date for completion of the above-captioned investigation to August 11, 2008.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., telephone 202-708-2310, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, D.C. 20436. Copies of all nonconfidential documents filed in connection with this investigation are or will be 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 SW., Washington, D.C. 20436, telephone 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<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>. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 11, 2006, based on a complaint, as amended, filed by Crocs, Inc. (“Crocs”) of Niwot, Colorado. 71 *Fed. Reg.* 27514 (2006). The amended complaint alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), 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 claims 1-2 of U.S. Patent No. 6,993,858; U.S. Patent No. D517,789 (“the ‘789 patent”); and the Crocs trade dress (the image and overall appearance of Crocs-brand footwear). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337. The complaint requests that the Commission issue a permanent general exclusion order and permanent cease and desist orders. The complaint identifies 11 respondents. The Commission terminated the investigation as to the trade dress

allegation on September 11, 2006. A twelfth respondent was added to the investigation on October 10, 2006. Five respondents have been terminated from the investigation on the basis of a consent order or a settlement agreement.

On September 29, 2006, Crocs moved for summary determination of infringement of the '789 patent. Six respondents moved for summary determination of non-infringement of the '789 patent on various dates in October 2006. Those respondents included Double Diamond Distribution Ltd.; Gen-X Sports Inc.; Old Dominion Footwear; Collective Licensing International, LLC; Effervescent, Inc.; and Holey Soles Holdings, Ltd. (collectively, "respondents"). Crocs' motion for summary determination of infringement was opposed by the respondents and the Commission investigative attorney (IA). The motions for summary determination of non-infringement were opposed by Crocs and the IA.

On November 7, 2006, ALJ issued an ID granting respondents' motions for summary determination of non-infringement of the '789 patent and denying Crocs' motion. Crocs and the IA petitioned for review of the ID pursuant to 19 C.F.R. § 210.43(a) on November 15, 2006. Respondents opposed the petitions on November 22, 2006. The IA filed a motion for leave to file a reply, with reply attached, on November 28, 2006.

On December 21, 2006, the Commission issued a notice denying the IA's motion and determining to review-in-part the ID to the extent that the ALJ granted the motions for summary determination of non-infringement of the '789 patent as to each respondent except for respondent Old Dominion Footwear (ODF), as no party challenged the ALJ's finding as to ODF.

On January 8 and January 16, 2007, respectively, the remaining respondents filed briefs and reply briefs in support of the ALJ determination, and complainant Crocs and the IA filed briefs and reply briefs in opposition. On February 15, 2007, the Commission issued an Order of Vacatur and Remand of Initial Determination.

On February 22, 2007, the ALJ issued an ID extending the target date of this investigation to August 11, 2008, and the deadline for his final initial determination to April 11, 2008. He stated that the extension was necessary because he will be on extended medical leave and his docket for 2007 is extremely crowded. On March 1, 2007, Crocs petitioned for review of the subject ID, claiming it would be prejudiced by the delay, and on March 8, 2007, the IA and the respondents filed briefs in opposition to Crocs' petition.

On March 26, 2007, the Commission issued a notice determining to review the ID. Having reviewed the record in this investigation, including the ID and the parties' briefs, the Commission has determined to affirm the subject ID. In doing so, the Commission assumes that the ALJ will, as suggested in the subject ID, reschedule the hearing and target date if there is a settlement in one of his other investigations that are pending in 2007. The Commission assumes that the ALJ will also reschedule this investigation if his schedule otherwise permits an earlier

hearing and target date.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, and in section 210.42(c) of the Commission's Rules of Practice and Procedure, 19 C.F.R. §§ 210.42(c).

By order of the Commission.

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Marilyn R. Abbott  
Secretary to the Commission

Issued: April 10, 2007