UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of **CERTAIN CASUAL FOOTWEAR AND PACKAGING THEREOF**	**Investigation No. 337-TA-1270**

NOTICE OF A COMMISSION DETERMINATION TO EXTEND THE TARGET DATE FOR COMPLETION OF THIS INVESTIGATION

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission ("Commission") has determined to extend the target date for completion of this investigation to September 11, 2023.

FOR FURTHER INFORMATION CONTACT: Carl P. Bretscher, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone (202) 205-2382. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov*. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at *https://www.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on July 9, 2021, based on a complaint filed by Crocs, Inc. of Broomfield, Colorado ("Crocs"). 86 FR 36303-304 (July 9, 2021). The complaint, as supplemented, 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, sale for importation, or sale in the United States after importation of certain casual footwear and packaging thereof by reason of infringement, false designation of origin, and dilution of one or more of U.S. Trademark Registration Nos. 5,149,328; 5,273,875 (collectively, the "3D Marks"); and 3,836,415 ("the Word Mark") (all collectively, "the Asserted Marks"). *Id*. The complaint alleges that a domestic industry exists, and that the threat or effect of certain alleged violations is to destroy or substantially injure an industry in the United States. *Id*.

The Commission's notice of investigation named numerous respondents, including: Hobby Lobby Stores, Inc. of Oklahoma City, Oklahoma ("Hobby Lobby"); Quanzhou ZhengDe Network Corp. d/b/a Amoji of Quanzhou, Fujian Province, China ("Amoji"); Skechers USA, Inc. of Manhattan Beach, California ("Skechers"); SG Footwear Meser Grp. Inc. a/k/a S. Goldberg & Co. of Hackensack, New Jersey ("SG Footwear"); Cape Robbin Inc. of Pomona, California ("Cape Robbin"); Dr. Leonard's Healthcare Corp. d/b/a Carol Wright of Edison, New Jersey ("Dr. Leonard's"); Fullbeauty Brands Inc. d/b/a Kingsize of New York, New York

("Fullbeauty"); Legend Footwear, Inc. d/b/a/ Wild Diva of City of Industry, California ("Wild Diva"); Fujian Huayuan Well Import and Export Trade Co., Ltd. of Fuzhou, Fujian Province, China ("Fujian"); Yoki Fashion International LLC of New York, New York ("Yoki"); Bijora, Inc. d/b/a Akira of Chicago, Illinois ("Akira"); Hawkins Footwear, Sports, Military & Dixie Store of Brunswick, Georgia ("Hawkins"); Shoe-Nami Inc. of Gretna, Louisiana ("Shoe-Nami"); PW Shoes, Inc. a/k/a P&W of Maspeth, New York ("PW"); 718 Closeouts of Brooklyn, New York ("718Closeouts"); Crocsky of Austin, Texas ("Crocsky"); Hobibear Shoes and Clothing Ltd. of Brighton, Colorado ("Hobibear"); Ink Tee of Los Angeles, California ("Ink Tee"); Maxhouse Rise Ltd. of Hong Kong, China ("Maxhouse"); La Modish Boutique of West Covina, California ("La Modish"); Loeffler Randall Inc. of New York, New York ("Loeffler Randall"); Star Bay Group Inc. of Hackensack, New Jersey ("Star Bay"); and Royal Deluxe Accessories, LLC of New Providence, New Jersey ("Royal Deluxe"). The Office of Unfair Import Investigations ("OUII") is also participating as a party.

On November 17, 2021, the Commission amended the complaint and notice of investigation to add certain new respondents, including: Orly Shoe Corp. of New York, New York ("Orly"); Mould Industria de Matrizes Ltda. d/b/a/ Boaonda of Brazil ("Boaonda"); Dongguan Eastar Footwear Enterprises Co., Ltd. of Guangzhou City, China ("Eastar"); KGS Sourcing Ltd. of Hong Kong, China ("KGS"); Fujian Wanjiaxin Industrial Developing, Inc. a/k/a Fujian Wanjiaxin Light Industrial Developing, Inc. of Quanzhou City, China ("Wanjiaxin"); Jinjiang Anao Footwear Co., Ltd. ("Anao"); Walmart Inc. of Bentonville, Arkansas ("Walmart"); and Huizhou Xinshunzu Shoes Co., Ltd. of Huizhou City, China ("Huizhou"), and to terminate the investigation with respect to Crocsky, Hobibear, and Ink Tee. Order No. 30 (Oct. 21, 2021), *unreviewed by* Comm'n Notice (Nov. 17, 2021).

The Commission subsequently terminated the investigation with respect to various respondents on the basis of settlement agreements or consent orders. *See* Order No. 12 (Aug. 11, 2021) (terminating Skechers), *unreviewed by* Comm'n Notice (Aug. 24, 2021); Order No. 16 (Aug. 26, 2021) (SG Footwear) and Order No. 17 (Aug. 26, 2021) (Cape Robbin), *unreviewed by* Comm'n Notice (Sept. 24, 2021); Order No. 20 (Sept. 1, 2021) (Dr. Leonard's), *unreviewed by* Comm'n Notice (Sept. 29, 2021); Order No. 22 (Sept. 9, 2021) (Fullbeauty) and Order No. 23 (Sept. 9, 2021) (Wild Diva), *unreviewed by* Comm'n Notice (Oct. 7, 2021); Order No. 24 (Sept. 17, 2021) (Fujian), *unreviewed by* Comm'n Notice (Oct. 7, 2021); Order No. 25 (Sept. 22, 2021) (Yoki), *unreviewed by* Comm'n Notice (Oct. 7, 2021); Order No. 26 (Sept. 28, 2021) (Akira), *unreviewed by* Comm'n Notice (Oct. 27, 2021); Order No. 27 (Oct. 6, 2021) (Hawkins), *unreviewed by* Comm'n Notice (Oct. 29, 2021); Order No. 32 (Nov. 1, 2021) (Shoe-Nami) and Order No. 33 (Nov. 1, 2021) (PW), *unreviewed by* Comm'n Notice (Nov. 29, 2021); Order No. 34 (Nov. 10, 2021) (718 Closeouts), *unreviewed by* Comm'n Notice (Dec. 6, 2021); Order No. 39 (Jan. 11, 2022) (Eastar), *unreviewed by* Comm'n Notice (Feb. 4, 2022); Order No. 46 (March 3, 2022) (Maxhouse, Wanjiaxin), *unreviewed by* Comm'n Notice (March 18, 2022); Order No. 49 (March 15, 2022) (Boaonda), *unreviewed by* Comm'n Notice (April 1, 2022); Order No. 54 (April 22, 2022) (Royal Deluxe), *unreviewed by* Comm'n Notice (May 17, 2022); Order No. 56 (May 6, 2022) (Loeffler Randall), *unreviewed by* Comm'n Notice (May 27, 2022); Order No. 81 (Sept. 28, 2022) (Walmart), *unreviewed by* Comm'n Notice (Oct. 20, 2022). The Commission

also terminated the investigation with respect to KGS for good cause. Order No. 40 (Feb. 1, 2022) (KGS), *unreviewed by* Comm'n Notice (Feb. 22, 2022).

On June 10, 2022, the Commission found respondents La Modish, Star Bay, Huizhou, and Anao ("Defaulting Respondents") were in default and waived their rights to appear, to be served with documents, and to contest the allegations in this investigation, pursuant to 19 CFR 210.16(b), 210.17(h). Order No. 58 (May 20, 2022), *unreviewed by* Comm'n notice (June 10, 2022).

On September 13-16, 2022, the presiding administrative law judge ("ALJ") held an evidentiary hearing. On September 30, 2022, Crocs, OUII, and the participating respondents (Orly, Hobby Lobby, and Amoji) filed their respective opening post-hearing briefs. On October 7, 2022, the parties filed their post-hearing reply briefs.

On January 9, 2023, the ALJ issued the final initial determination ("ID") finding no violation of section 337 because: (1) Crocs failed to prove that any of Respondents infringes the 3D Marks; (2) Crocs failed to prove that Orly or Hobby Lobby infringes the Word Mark; (3) Crocs did not prove that any of Respondents falsely designated the origin of their accused products or caused unfair competition; (4) Crocs did not prove that any of the Respondents diluted any of the Asserted Marks, either by blurring or tarnishment; (5) the 3D Marks were invalid prior to registration for lack of secondary meaning; and (6) Crocs waived its infringement contentions against Defaulting Respondents. ID at 71-72, 83-86, 148-49. The ID finds that Crocs has satisfied both the technical and economic prongs of the domestic industry requirement, and it takes no position on injury. *Id.* at 130, 149. The ID further finds that Respondents failed to prove the 3D Marks are invalid as functional or the Word Mark is invalid as generic, and it takes no position on Respondents' "fair use" defense. *Id*. at 128-29, 149.

On April 5, 2023, the Commission determined to review the ID in part with respect to the ID's findings that: (1) the Commission has subject matter jurisdiction; (2) Crocs waived its infringement contentions with respect to the lined version of Orly's Gators; (3) Crocs waived its infringement contentions against Defaulting Respondents; (4) Crocs failed to prove that consumers were likely to confuse the accused products with the Asserted Marks; (5) Crocs failed to prove that Respondents falsely designated the origin of the accused products; (6) Crocs failed to prove that Respondents improperly diluted the Asserted Marks by blurring or tarnishment; (7) the 3D Marks are not entitled to the presumption of validity and are invalid for lack of secondary meaning; and (8) Crocs satisfied the technical and economic prongs of the domestic industry requirement.

The Commission has determined to extend the target date for completion of this investigation to September 11, 2023.

The Commission vote for this determination took place on August 31, 2023.

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 Part 210 of the Commission's Rules of Practice and Procedure (19 CFR Part 210).

By order of the Commission.

Lisa R. Barton
Secretary to the Commission

Issued: August 31, 2023