

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

In the Matter of

CERTAIN FOAM FOOTWEAR

Investigation No. 337-TA-567

**NOTICE OF A COMMISSION DETERMINATION TO EXTEND THE DEADLINE FOR
DETERMINING WHETHER TO REVIEW A REMAND INITIAL DETERMINATION
FINDING A VIOLATION OF SECTION 337**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to extend the deadline for determining whether to review the presiding administrative law judge's ("ALJ") remand initial determination ("ID") finding a violation of section 337 in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-5468. Copies of non-confidential 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, S.W., Washington, D.C. 20436, telephone (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>. 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 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 alleged 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 ("the '858 patent"); 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 alleged that an industry in the United States exists as required by subsection (a)(2) of section 337. The complaint requested that the Commission issue a permanent general exclusion order and permanent cease and desist orders. The complaint identified 11 respondents that included: (1) Collective Licensing

International, LLC of Englewood, Colorado; (2) Double Diamond Distribution Ltd. (“Double Diamond”) of Saskatoon, Saskatchewan; (3) Effervescent Inc. (“Effervescent”) of Fitchburg, Massachusetts; (4) Gen-X Sports, Inc. of Toronto, Ontario; (5) Holey Shoes Holding Ltd. of Vancouver, British Columbia; (6) Australia Unlimited, Inc. of Seattle, Washington; (7) Cheng’s Enterprises Inc. of Carlstadt, New Jersey; (8) D. Myers & Sons, Inc. of Baltimore, Maryland; (9) Inter-Pacific Trading Corp. of Los Angeles, California; (10) Pali Hawaii of Honolulu, Hawaii; and (11) Shaka Shoes of Kaliua-Kona, Hawaii. The Commission terminated the investigation as to the trade dress allegation on September 11, 2006. A twelfth respondent, Old Dominion Footwear, Inc. of Madison Heights, Virginia, was added to the investigation on October 10, 2006. All but two respondents have been terminated from the investigation on the basis of a consent order, settlement agreement, or undisputed Commission determination of non-infringement. The two remaining respondents are Double Diamond and Effervescent.

On April 11, 2008, the ALJ issued his final ID finding no violation of section 337, and his recommendation on remedy and bonding should the Commission have found that there was a violation. On July 25, 2008, after review, the Commission affirmed the ALJ’s final ID with certain modifications and clarifications, and terminated the investigation with a finding of no violation of section 337. The Commission took no position regarding the issue of enforceability of the ‘858 and ‘789 patents. On February 24, 2010, the U.S. Court of Appeals for the Federal Circuit issued its judgment overturning the Commission’s findings regarding invalidity of the ‘858 patent, and non-infringement/lack of domestic industry concerning the ‘789 patent, and remanded the investigation for a determination of infringement and any appropriate remedies. On July 6, 2010, the Commission remanded the investigation to the ALJ to decide the remaining issue of enforceability of the patents.

On February 9, 2011, the ALJ issued his remand ID finding a violation of section 337 by respondents. On February 25, 2011, respondents filed both a joint petition for review of the RID and a motion for leave to file the petition two (2) days late on February 25, 2011. On March 4, 2011, the Commission issued an order declining to grant respondents’ motion without prejudice.

On March 16, 2011, respondents filed a motion for an enlargement of the time for filing petitions for review. On March 18, 2011, the Commission issued an order granting respondents’ motion.

The Commission has determined to extend the deadline for determining whether to review the subject RID by fourteen (14) days to April 25, 2011.

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(h) (19 C.F.R. § 210.42(h)) of the Commission's Rules of Practice and Procedure.

By order of the Commission.

/s/

James R. Holbein
Acting Secretary to the Commission

Issued: March 18, 2011