

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

**In the Matter of**

**CERTAIN FOAM FOOTWEAR**

**Investigation No. 337-TA-567**

**NOTICE OF A COMMISSION DETERMINATION TO DENY PETITION TO MODIFY,  
SUSPEND, OR RESCIND THE COMMISSION'S GENERAL EXCLUSION ORDER AND  
CEASE AND DESIST ORDER WITH RESPECT TO U.S. PATENT NO. D517,789**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to deny a petition filed by respondent Double Diamond Distribution Ltd. ("Double Diamond") of Saskatoon, Canada and U.S.A. Dawgs, Inc. ("USA Dawgs," a non-party to the original investigation) of Las Vegas, Nevada (collectively, the "requesters") to modify, suspend, or rescind the Commission's general exclusion order ("GEO") and cease and desist order ("CDO") directed against Double Diamond issued in the above-identified investigation with respect to U.S. Patent No. D517,789 ("the '789 patent").

**FOR FURTHER INFORMATION CONTACT:** Clint Gerdine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, D.C. 20436, telephone (202) 708-2310. 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, SW., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://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 FR 27514-15 (May 11, 2006). The complaint alleged, *inter alia*, 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”) and the ’789 patent. The complaint named several respondents including Double Diamond.

On July 25, 2008, the Commission issued its final determination finding no violation of section 337 based on non-infringement and non-satisfaction of the technical prong of the domestic industry requirement with respect to the ’789 patent, and invalidity of the ’858 patent as obvious under 35 U.S.C. 103. 73 FR 45073-74 (Aug. 1, 2008). The Commission’s final determination included a determination that the ’789 patent was not invalid. *See Certain Foam Footwear, Inv. No. 337-TA-567, Final Initial Determination at 114-15, 2008 WL 1855922, at \*58-59 (Apr. 11, 2008)*. On July 15, 2011, after an appeal to the U.S. Court of Appeals for the Federal Circuit and subsequent remand vacating the Commission’s previous finding of no violation, the Commission found a violation of section 337 based on infringement of the asserted claims of the patents and issued a GEO and, *inter alia*, a CDO directed against Double Diamond. 76 FR 43723-24 (July 21, 2011).

On September 14, 2017, requesters petitioned to modify, suspend, or rescind enforcement of the GEO and CDO, with respect to the ’789 patent, based on final rejection of the sole claim of this patent by the U.S. Patent Office as unpatentable over the prior art at the conclusion of *inter partes* reexamination proceedings on August 9, 2017.

On September 25, 2017, Crocs filed a response in opposition to the petition. No other responses were received.

For the reasons set forth in the Commission’s Order, issued contemporaneously with this notice, the Commission has determined to deny the petition.

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: October 20, 2017