

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

In the Matter of

CERTAIN FOAM FOOTWEAR

Investigation No. 337-TA-567

**NOTICE OF DECISION NOT TO REVIEW AN INITIAL DETERMINATION
GRANTING IN PART RESPONDENT DOUBLE DIAMOND DISTRIBUTION, LTD.'S
MOTION FOR SUMMARY DETERMINATION OF NON-INFRINGEMENT OF
UNITED STATES PATENT NO. 6,993,858 BY CERTAIN MODELS**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review that portion of the presiding administrative law judge's ("ALJ") Order No. 35 that constitutes an initial determination ("ID") granting in part the motion of respondent Double Diamond Distribution, Ltd. ("Double Diamond") of Canada for summary determination of non-infringement of United States Patent No. 6,993,858 (the '858 patent).

FOR FURTHER INFORMATION CONTACT: Monica A. Stump, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3106. Copies of the ALJ's ID and all other 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: This investigation was instituted 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 the '858 patent; U.S. Patent No. D517,789 (the asserted design patent); and the Crocs trade dress. The complaint identified 11 respondents. The Commission terminated the investigation as to the trade dress allegations on September 11, 2006.

On September 29, 2006, Double Diamond filed a motion for summary determination of non-infringement of the '858 patent. Double Diamond asserted that Crocs conceded in its interrogatory responses that Crocs does not claim that Double Diamond's Beach DAWGS™, Groovy DAWGS™, and Big DAWGS™ products infringe claims 1 or 2 of the '858 patent.

On October 16, 2006, Complainant Crocs filed a response opposing the motion. The Commission investigative attorney supported the motion. No other party opposed the motion.

On November 7, 2006, the ALJ issued an Order No. 35, which contained an ID granting in part Double Diamond's motion for summary determination of non-infringement of the '858 patent. The ALJ concluded that there was no genuine issue of material fact regarding non-infringement of the '858 patent by Double Diamond's Beach DAWGS™, Groovy DAWGS™, and Big DAWGS™ products. No petitions for review were filed.

Having examined the record of this investigation, the Commission has determined not to review the ID.

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

By order of the Commission.

/s/
Marilyn R. Abbott
Secretary to the Commission

Issued: November 27, 2006