

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 A MOTION FOR SUMMARY DETERMINATION THAT THE
ECONOMIC PRONG OF THE DOMESTIC INDUSTRY REQUIREMENT
REGARDING THE PATENTS AT ISSUE HAS BEEN MET**

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 the portion of the presiding administrative law judge's ("ALJ") Order No. 34 that constitutes an initial determination ("ID") granting Complainant's motion for summary determination regarding the economic prong of the domestic industry requirement.

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 U.S. Patent No. 6,993,858; U.S. Patent No. D517,789; and the Crocs trade dress. The complaint identified 11 respondents. The Commission terminated the investigation as to the trade dress allegation on September 11, 2006.

On September 29, 2006, Complainant filed a motion for summary determination that it satisfies the economic prong of the domestic industry requirement. Crocs relied upon its investment in employment, research and development, engineering, marketing and sales, and plant and equipment to show that it satisfies the economic prong of the domestic industry requirement set forth in 19 U.S.C. § 1337(a)(2)-(3). Both respondent Double Diamond Distribution, Ltd. of Canada and, collectively, respondents Collective Licensing International LLC of Englewood, Colorado; Effervescent, Inc. of Fitchburg, Massachusetts; and Holey Soles Holdings, Inc. of Canada filed responses that did not oppose Crocs' motion with regard to the economic prong of the domestic industry requirement. Similarly, the Commission investigative attorney filed a response that did not oppose Crocs' motion with respect to the economic prong. No other respondents responded to the motion.

On November 7, 2006, the ALJ issued Order No. 34, which contained an ID granting Complainant's motion for summary determination regarding the economic prong of the domestic industry requirement. The ALJ concluded that there was no genuine issue of material fact regarding Crocs' satisfaction of the economic prong. 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