

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

In the Matter of

CERTAIN FOAM FOOTWEAR

Investigation No. 337-TA-567
(Bond Forfeiture)

**NOTICE OF COMMISSION DECISION NOT TO REVIEW AN INITIAL
DETERMINATION GRANTING COMPLAINANT'S MOTION FOR FORFEITURE OF
BOND POSTED BY RESPONDENT EFFERVESCENT, INC.**

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 an initial determination ("ID") (Order No. 47) of the presiding administrative law judge ("ALJ") granting a motion filed by complainant Crocs, Inc. ("Crocs") of Niwot, Colorado for forfeiture of the bond posted by respondent Effervescent, Inc. ("Effervescent") of Fitchburg, Massachusetts.

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. 71 *Fed. Reg.* 27514-15 (May 11, 2006). The 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, and requested that the Commission issue a permanent general exclusion order and permanent cease and desist orders. The notice of investigation named numerous respondents including Effervescent.

On July 15, 2011, at the conclusion of remand proceedings ordered by the U.S. Court of Appeals for the Federal Circuit, the Commission issued notice of its violation and remedy determinations which included a cease and desist order prohibiting Effervescent from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for, foam footwear that infringe one or more of claims 1 and 2 of the '858 patent, or the claimed design of the '789 patent. The Commission set a bond of \$0.05 per pair of shoes for Effervescent's covered products to permit importation and the activities prohibited by the cease and desist order during the period of Presidential review (19 U.S.C. § 1337(j)). *See 76 Fed. Reg. 43723-24* (July 21, 2011).

On December 2, 2011, Crocs moved for forfeiture of the bond posted by Effervescent in order to continue conduct prohibited by the cease and desist order during the period of Presidential review. No party opposed the motion. The Commission investigative staff did not participate in this proceeding.

The ALJ issued the subject ID on January 13, 2012, granting the motion for bond forfeiture. He found that the motion satisfied Commission rule 210.50(d) and that the United States Trade Representative had not disapproved the Commission's remedial orders. He further found that Effervescent had previously agreed to forfeiture of its bond in a letter submitted to the Commission on August 18, 2011. No party petitioned for review of the ID. 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 sections 210.42(h) and 210.50(d) of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.42(h), 210.50(d)).

By order of the Commission.

/s/
James R. Holbein
Secretary to the Commission

Issued: February 2, 2012