

**IN THE UNITED STATE DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.: 15-1288

CROCS, INC., a Delaware corporation;
Plaintiff,

v.

THE CHILDREN'S PLACE, INC., a Delaware corporation;
THE CHILDREN'S PLACE SERVICES COMPANY, LLC, a Delaware limited liability
company; and
THE CHILDREN'S PLACE RETAIL STORES, INC., a Delaware corporation;

Defendants.

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Crocs, Inc. ("Crocs"), for its Complaint against The Children's Place, Inc., The Children's Place Services Company, LLC, and The Children's Place Retail Stores, Inc. (collectively "Defendants"), states as follows:

NATURE OF THE ACTION

1. This is an action at law and in equity for patent infringement, arising under the Patent Act, 35 U.S.C. §§ 1, *et seq.*

2. Defendants manufacture, use, offer for sale, sell, and/or import molded footwear throughout the United States that infringe Crocs's rights in U.S. Patent No. 6,993,858 B2 for "Breathable Footwear Pieces" ("the '858 Patent). Defendants' products are not manufactured or authorized by Crocs, nor are Defendants connected to or affiliated with Crocs in any way. This action seeks injunctive relief and monetary damages to remedy the harm to Crocs caused by Defendants' infringement of Crocs's patent rights.

PARTIES, JURISDICTION AND VENUE

3. Plaintiff Crocs, Inc. (“Crocs”) is a Delaware corporation with a principal place of business at 7477 E. Dry Creek Parkway, Niwot, Colorado 80503.

4. On information and belief, The Children’s Place, Inc. is a Delaware corporation with a principal place of business at 500 Plaza Drive, Secaucus, New Jersey 07094.

5. On information and belief, The Children’s Place Services Company, LLC is a Delaware limited liability company and fully owned subsidiary of The Children’s Place, Inc., with a principal place of business at 500 Plaza Drive, Secaucus, New Jersey 07094.

6. On information and belief, The Children’s Place Retail Stores, Inc. is a Delaware corporation and fully owned subsidiary of The Children’s Place, Inc., with a principal place of business at 500 Plaza Drive, Secaucus, New Jersey 07094.

7. The Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. §§ 1331 and 1338(a) because the case presents well-pleaded federal questions arising under the Patent Act, 35 U.S.C. §§ 1, *et seq.*

8. The exercise of *in personam* jurisdiction over Defendants comports with the laws of the State of Colorado and the constitutional requirements of due process because Defendants and/or their agents transact business and/or offer to transact business within Colorado.

9. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 28 U.S.C. § 1400(b) because Defendants reside in Colorado.

GENERAL ALLEGATIONS

CROCS, INC.

10. Crocs is a designer, manufacturer, and market of CrocsTM-branded footwear for men, women, and children, which incorporate Crocs’s patented designs and technology.

11. Crocs’s footwear is sold through a wide range of distribution channels, including department stores, specialty footwear stores, sporting goods retailers, and outdoor retailers.

Crocs's footwear is also sold through a variety of specialty channels, including gift shops, uniform suppliers, independent bicycle dealers, specialty food retailers, and health and beauty stores. Crocs distributes its products in over 125 countries worldwide. In addition, Crocs sells its footwear through its websites, including but not limited to www.crocs.com, and in kiosks in shopping malls throughout the country.

THE '858 PATENT

12. On February 7, 2006, the U.S. Patent and Trademark Office duly, properly, and legally issued U.S. Patent No. 6,993,858 B2, entitled "Breathable Footwear Pieces," with Crocs as the assignee. A copy of the '858 Patent is submitted with this Complaint as Exhibit A.

DEFENDANTS' SALES OF INFRINGING FOOTWEAR

13. On information and belief, Defendants collectively act as a specialty retailer of children's apparel, footwear, and accessories. Defendants operate over one thousand stores in the United States, Canada, and Puerto Rico, including fourteen locations in the state of Colorado. In addition, they operate an online storefront at www.childrensplace.com. The domain name childrensplace.com is registered to The Children's Place Services Company, LLC.

14. On information and belief, Defendants manufacture, use, offer for sale, sell, and/or import molded footwear called the "Cruiser Sandal" (pictured below). The "Cruiser Sandal" is sold across the United States through Defendants' website at www.childrensplace.com. According to the website, the "Cruiser Sandal" is made of "soft molded foam," includes a "self strap [that] swings up to convert [it] into a clog," has a "textured self insole and outsole," and contains ventilation cutouts on the top and in the sides of the shoe.

15. Defendants' "Cruiser Sandal" infringes at least Claim 1 of the '858 Patent.



“Cruiser Sandal,” available on Defendants’ website at <http://www.childrensplace.com/webapp/wcs/stores/servlet/en/usstore/p/cruiser-sandal-2039462-IV>.

16. The infringing footwear products that Defendants manufacture, use, offer for sale, sell, and/or import throughout the United States are not manufactured by Crocs, nor has Crocs licensed, authorized, sponsored, endorsed, or approved of Defendants’ actions in any way. Crocs has never provided any authorization, license, assignment, or other permission to Defendants to use the ’858 patent. Defendants are not associated with Crocs in any way.

17. Defendants’ continued sale, offering for sale, importation, and distribution of molded footwear, including, without limitation, the “Cruiser Sandal,” infringes the ’858 Patent. These infringing actions have resulted in irreparable harm to Crocs for which Crocs has no adequate remedy at law.

CLAIM FOR RELIEF

Infringement of the ’858 Patent -- 35 U.S.C. § 1, *et seq.*

18. Crocs hereby incorporates each of the preceding paragraphs as if fully set forth herein.

19. Defendants have manufactured, used, offered for sale, sold, and/or imported, and continue to manufacture, use, offer to sell, sell, and/or import footwear products, including but

not limited to the “Cruiser Sandal,” that infringe the ’858 Patent, in violation of 35 U.S.C. § 271(a).

20. As a result of Defendants’ infringement of Crocs’s rights in the ’858 Patent, Crocs has suffered and will continue to suffer damages in an amount to be proved at trial. In addition, Crocs is entitled to recovery of Defendants’ profits pursuant to 35 U.S.C. § 289.

21. Defendants’ continued infringement with full knowledge of the ’858 Patent and Crocs’s rights therein, at least as of the filing of this lawsuit, is willful.

22. Defendants’ willful infringement of Crocs’s rights in the ’858 Patent warrants an award of treble damages under 35 U.S.C. § 284, and makes this an exceptional case warranting an award of Crocs’s reasonable attorney’s fees and costs under 35 U.S.C. § 285.

23. Defendants’ infringement of the ’858 Patent has caused irreparable harm to Crocs, and will continue to do so unless enjoined. As a result, Crocs is entitled to injunctive relief pursuant to 35 U.S.C. § 283.

PRAYER FOR RELIEF

WHEREFORE, Crocs prays for entry of judgment granting:

A. A preliminary and/or permanent injunction restraining Defendants, their officers, agents, servants, employees, directors, representatives, successors-in-interest, parent corporations, subsidiary corporations, affiliated companies, and all other persons, firms or entities acting in concert or participating with them, directly or indirectly, who receive actual notice of this judgment, from manufacturing, using, marketing, distributing, selling, offering to sell, and importing any molded footwear that infringes the ’858 Patent;

B. An award to Crocs of its actual damages based on its claims in an amount according to proof;

C. A declaration that Defendants’ infringement and other wrongful acts herein alleged be determined deliberate, willful, and in conscious disregard of Crocs’s rights pursuant to 35 U.S.C. § 284;

D. A declaration that this case is exceptional, and, in conjunction therewith, an award of reasonable attorney's fees and costs pursuant to 35 U.S.C. § 285;

E. An award of treble damages against Defendants pursuant to 35 U.S.C. § 284 as a result of Defendants' deliberate and willful infringement in conscious disregard of Crocs's rights;

F. Compensatory damages;

G. Pre-judgment and post-judgment interest as allowed by law; and

H. Such other and further equitable and legal relief as this Court deems just and proper.

JURY DEMAND

Crocs hereby demands a trial by jury on all issues so triable.

Respectfully submitted this 17th day of June, 2015

s/ Michael A. Berta

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