

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CIVIL CASE NO.: _____

CROCS, INC., a Delaware corporation,

Plaintiff,

v.

CVS Health Corporation, formerly known as
CVS Caremark Corporation, a Delaware
corporation; and CVS Pharmacy, Inc., a
Delaware corporation,

Defendants.

PLAINTIFF CROCS, INC.'S COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Crocs, Inc. ("Crocs"), for its Complaint against Defendants CVS Health Corporation and CVS Pharmacy, Inc. (collectively, "CVS"), 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. This action represents an amendment to claims that have been pending against CVS since 2012 in the United States District Court for the District of Colorado. Crocs has filed this amended complaint in the present Court to address recent objections and representations by CVS pertaining to its corporate presence in Colorado. Upon filing these amended claims, Crocs will dismiss the pending complaint against CVS in Colorado.

2. CVS has manufactured, used, offered for sale, sold, and/or imported molded footwear throughout the United States that copies Crocs's well-known footwear design and infringes Crocs's rights in U.S. Patent No. D 517,789 ("the '789 Patent") and U.S. Patent No. D 632,465S ("the '465 Patent"). CVS's products are not manufactured by Crocs, nor is CVS

connected or affiliated with, or authorized by, Crocs in any way. This action seeks injunctive relief and monetary damages to remedy the harm to Crocs caused by CVS's infringement of Crocs's patent rights.

PARTIES, JURISDICTION AND VENUE

3. 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, CVS Health Corp., formerly known as CVS Caremark Corp., is a Delaware corporation with a principal place of business at One CVS Drive, Woonsocket, Rhode Island 02895.

5. On information and belief, CVS Pharmacy, Inc. is a Delaware corporation with a principal place of business at One CVS Drive, Woonsocket, Rhode Island 02895.

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

7. The exercise of *in personam* jurisdiction over CVS comports with the laws of the State of Florida and the constitutional requirements of due process because CVS has committed acts of infringements in violation of 35 U.S.C. § 271(a), and places infringing products into the stream of commerce, with the knowledge or understanding that such products are sold in the State of Florida, including this District. On information and belief, CVS has derived substantial revenue from the sale of infringing products in this District, expects its actions to have consequences in this District, and has derived substantial revenue from interstate and international commerce.

8. Venue is proper in this District pursuant to 28 U.S.C. § 1391 and 28 U.S.C. § 1400(b), because on information and belief, CVS transacts business within this District, has imported into this District, and has offered for sale in this District products that infringe Crocs's patents. In addition, a substantial part of the events giving rise to the claims occurred in this District.

GENERAL ALLEGATIONS

CROCS, INC.

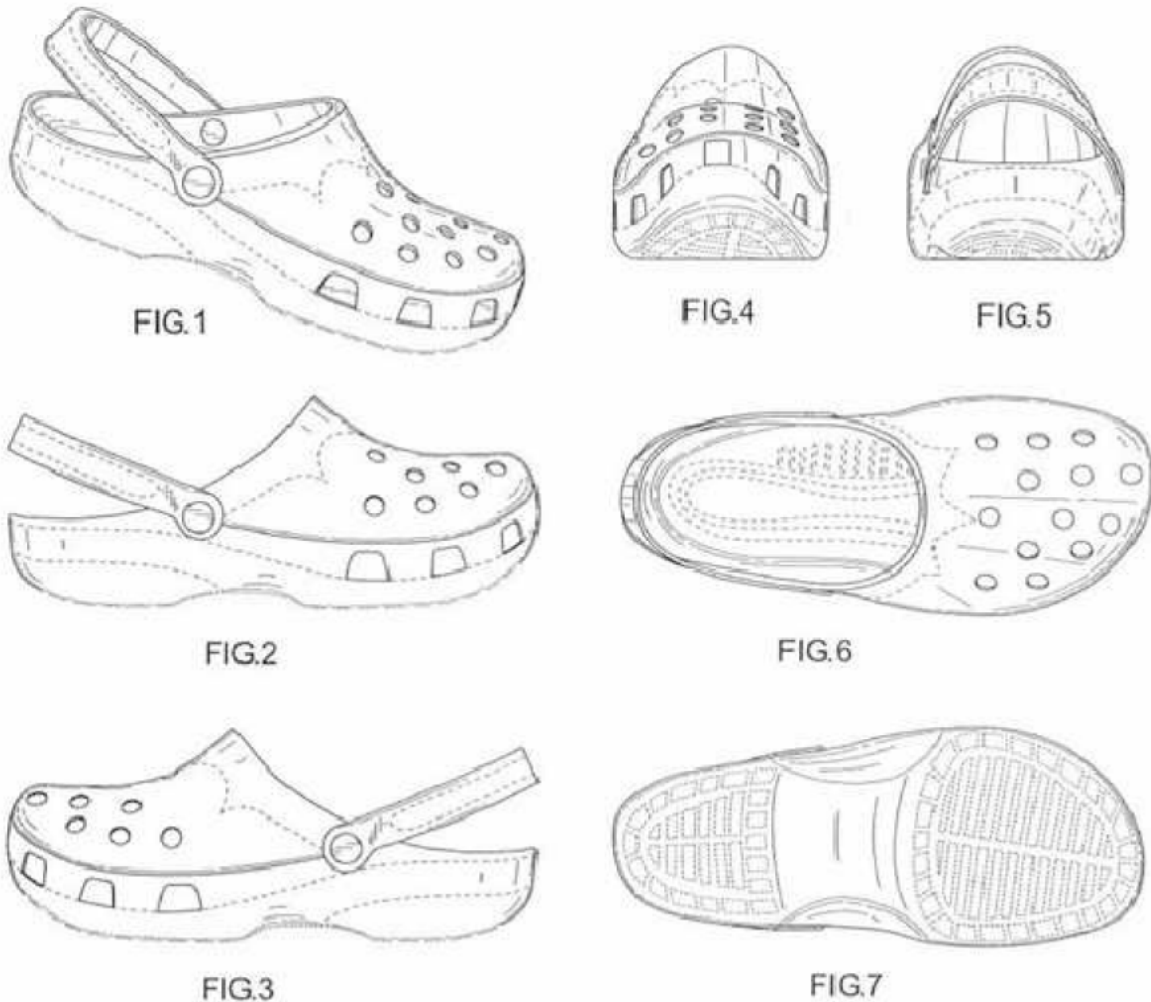
9. Crocs is a designer, manufacturer and marketer of Crocs™-branded footwear for men, women and children, which incorporate Crocs's patented designs and technology.

10. Crocs™ footwear is sold through a wide range of distribution channels, including department stores, specialty footwear stores, sporting goods retailers, and outdoor retailers. Crocs™ 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 www.crocsrx.com, and in kiosks in shopping malls throughout the country. The Crocs brand has become well-known for the design, manufacture and sale of distinctive molded footwear and related products worldwide.

THE '789 PATENT

11. On March 28, 2006, the U.S. Patent and Trademark Office duly, properly and legally issued U.S. Patent No. D 517,789, entitled "Footwear," with Crocs as the assignee. A copy of the '789 Patent is submitted with this Complaint as Exhibit A.

12. The '789 Patent claims an ornamental design for footwear as shown and described in the following figures:



13. On February 24, 2010, the United States Court of Appeals for the Federal Circuit issued a decision confirming the '789 Patent and finding that several products, including ones similar, if not identical, to the footwear sold by CVS, infringe the '789 Patent. The Federal Circuit's decision also acknowledges the fact that Crocs' shoes, which practice the '789 patent, enjoyed a great deal of commercial success and industry praise and that others in the industry have been copying Crocs' inventions.

THE '465 PATENT

14. On February 15, 2011, the U.S. Patent and Trademark Office duly, properly and legally issued U.S. Patent No. D 632,465 S, entitled "Footwear," with Crocs as the assignee. A copy of the '465 Patent is submitted with this Complaint as Exhibit B.

15. The '465 Patent claims an ornamental design for footwear as shown and described in the following figures:

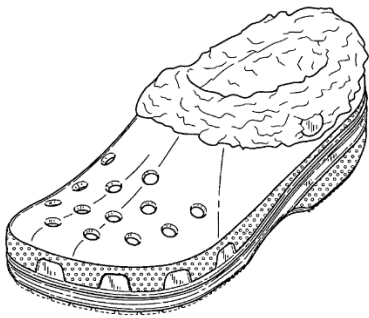


FIG.1

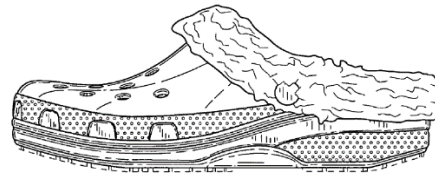


FIG.4

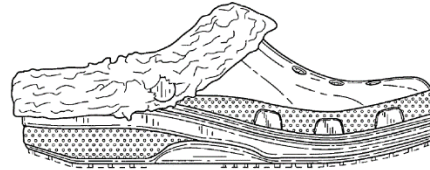


FIG.5

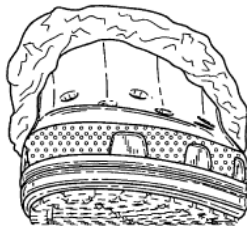


FIG.2

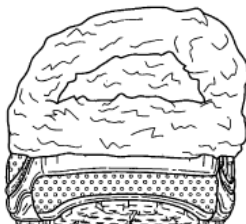


FIG.3



FIG.6

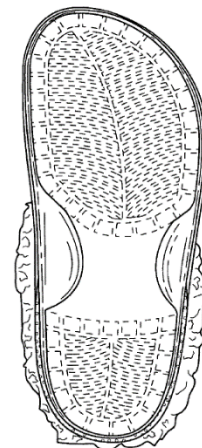


FIG.7

CVS'S SALES OF INFRINGING FOOTWEAR

16. Through its retail division, CVS Pharmacy, CVS has manufactured, used, offered for sale, sold, and/or imported molded footwear that infringes the '789 Patent, including, but not limited to, "Doggers" toddler clogs (pictured below), which are distributed throughout the United States by U.S.A. Dawgs, Inc. ("Dawgs").



"Doggers" toddler clogs purchased at a CVS Pharmacy in Delray Beach, Florida on December 20, 2011

17. Through its retail division, CVS Pharmacy, CVS has manufactured, used, offered for sale, sold, and/or imported molded footwear that infringes the '465 Patent, including, but not limited to, "Fleece-Lined Doggers" clogs, which are distributed throughout the United States by Dawgs. For example, CVS Pharmacy has offered for sale "Fleece-Lined Doggers" clogs in its product brochures and advertisements directed to this District.

18. Crocs holds other patents for its footwear products, in addition to the '789 and '465 Patents, including U.S. Patent No. 6,993,858 B2, entitled "Breathable Footwear Pieces." CVS's molded footwear may also infringe these other patents.

19. The infringing footwear products that CVS manufactures, uses, offers for sale, sells, and/or imports throughout the United States are not manufactured by Crocs; nor has Crocs licensed, authorized, sponsored, endorsed, or approved CVS's actions in any way; and CVS is not associated or connected with Crocs. Crocs has never provided any authorization, license, assignment, or other permission to CVS to use the '789 or '465 Patents.

20. The fact that the "Doggers" clogs sold by CVS are obvious imitations of well-known and successful Crocs styles, which the United States Court of Appeals for the Federal Circuit has addressed at least as to the '789 Patent, shows that CVS's conduct is intentional and in bad faith.

21. To the extent CVS continues to sell, offer for sale, import, and distribute molded footwear, including, without limitation, the "Doggers" clogs, that infringes the '789 Patent, and to the extent CVS continues to sell, offer for sale, import, and distribute molded footwear, including, without limitation, the "Fleece-Lined Doggers" clogs, that infringes the '465 Patent, its infringing actions are causing irreparable harm to Crocs for which Crocs has no adequate remedy at law.

HISTORY OF CROCS'S CLAIMS AGAINST CVS

22. On August 8, 2012, Crocs first filed its claims arising from infringement of the '789 patent against CVS in the United States District Court for the District of Colorado, in Civil Action No. 1:12-cv-02096-PAB. On information and belief, between 2006 and 2012, CVS owned or maintained retail pharmacy locations in Colorado, a Pharmacy Benefit Management

office in Colorado, and a CarePlus Pharmacy located in Denver, Colorado, making the exercise of jurisdiction reasonable as of the time the lawsuit was filed. Moreover, patent infringement claims relating to the same Dawgs-branded footwear sold by CVS were already pending against Dawgs, its affiliated entity Double Diamond Distribution, Ltd. (“DDD”), and others, in Civil Action No. 06-cv-00605-PAB-KMT (the “Colorado Action”). Therefore, the interest of judicial economy was served by having claims relating to the same infringing footwear and raising a common set of factual and legal issues pending before the same court.

23. Shortly after Crocs brought suit against CVS in Colorado, that lawsuit was consolidated with the Colorado Action in light of the existence of common issues of fact. Within weeks, and prior to discovery being taken of Dawgs, DDD or CVS, the Colorado Action was stayed at the request of Dawgs and DDD, given that Dawgs and DDD had petitioned the U.S. Patent Office to reexamine the ‘858 and ‘789 Patents.

24. On April 21, 2016, at the request of Dawgs and DDD, the stay in the Colorado Action was lifted. On May 23, 2016, CVS moved to dismiss the claims against it for lack of personal jurisdiction.

25. In the interest of conserving judicial resources, and to prevent the need for Crocs to maintain a separate lawsuit against CVS in a separate forum that raised similar questions of fact and law, Crocs offered to dismiss CVS from the Colorado Action without prejudice, so long as Dawgs, DDD and CVS stipulated that (1) all shoes sold by Dawgs or DDD to CVS during the relevant time periods were sold to CVS within the United States; (2) Dawgs and DDD would retain samples of each shoe sold to CVS and documents sufficient to show revenue and volume of all sales of shoes to CVS; and (3) CVS would not rely on its status as a non-party to the Colorado Action as a basis for objecting to discovery served on it in the Colorado action.

Counsel for CVS rejected Crocs's proposal. Consequently, Crocs is amending its claims against CVS in this forum, and will voluntarily dismiss its complaint against CVS in the Colorado Action upon the filing of this action.

CLAIM FOR RELIEF

Infringement of the '789 Patent – 35 U.S.C. § 1, et seq.

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

27. CVS has manufactured, used, offered for sale, sold, and/or imported footwear products, including, but not limited to, the "Doggers" clogs, that infringe the '789 Patent, in violation of 35 U.S.C. § 271(a).

28. As a result of CVS's infringement of Crocs's rights in the '789 Patent, Crocs has suffered and, to the extent infringement is ongoing, will continue to suffer damages in an amount to be proved at trial. In addition, Crocs is entitled to recovery of CVS's profits pursuant to 35 U.S.C. § 289.

29. CVS's infringement of the '789 Patent has been with full knowledge of the '789 Patent and Crocs's rights therein. Any continued infringement with full knowledge of the '789 Patent and Crocs's rights therein is willful.

30. CVS's willful infringement of Crocs's rights in the '789 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.

31. CVS's infringement of the '789 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.

Infringement of the '465 Patent – 35 U.S.C. § 1, et seq.

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

33. CVS has manufactured, used, offered for sale, sold, and/or imported footwear products, including, but not limited to, “Fleece-Lined Doggers” clogs, that infringe the '465 Patent, in violation of 35 U.S.C. § 271(a).

34. As a result of CVS's infringement of Crocs's rights in the '465 Patent, Crocs has suffered and, to the extent infringement is ongoing, will continue to suffer damages in an amount to be proved at trial. In addition, Crocs is entitled to recovery of CVS's profits pursuant to 35 U.S.C. § 289.

35. On information and belief, CVS's infringement of the '465 Patent has been with full knowledge of the '465 Patent and Crocs's rights therein at least as of the filing of this amended complaint. Any continued infringement with full knowledge of the '465 Patent and Crocs's rights therein is willful.

36. CVS's willful infringement of Crocs's rights in the '465 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.

37. CVS's infringement of the '465 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 CVS, its 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 '789 Patent or '465 Patent;

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

C. An award to Crocs of the total profits received or derived by CVS from the manufacture, marketing, sale, offering for sale, and/or distribution of products bearing or using any copy or colorable imitation of the '789 Patent or '465 Patent pursuant to 35 U.S.C. § 289;

D. A declaration that CVS's 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;

E. 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;

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

G. Compensatory damages;

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

I. 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.

Dated: June 10, 2016

Respectfully Submitted,

/s/Gerald E. Greenberg

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