

Paws vs. Jaws: Dawgs Take on Crocs in The Federal Circuit

Crocs, Inc. v. Effervescent, Inc., No. 1:06-cv-00605 (Fed. Cir. October 3, 2024)

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On October 3, 2024, the Federal Circuit held that a party may be liable for false advertising violations under Section 43(a)(1)(B) of the Lanham Act when it “falsely claims that it possesses a patent on a product feature” and advertises that product feature in a manner that misleads consumers about “the nature, characteristics, or qualities of its product.”

Crocs, Inc. (“Crocs”) is a large, well-known footwear and clothing company that mainly designs, manufactures, and markets foam footwear. In 2006, Crocs sued Double Diamond Distribution, Ltd. and several other competitors (collectively, “Dawgs”) for patent infringement. The case was stayed several times due to Section 337, inter parties review, and bankruptcy proceedings. In 2016, Dawgs filed a counterclaim against Crocs for false advertising violations under the Lanham Act. In 2017, Dawgs filed an amended counterclaim, asserting that Crocs engaged in a “campaign to mislead its customers” about the characteristics of the primary material in Crocs, “Croslite,” by deceiving its customers into believing that “Croslite” was a patented one-of-a-kind material.

The district court subsequently granted summary judgment in favor of Crocs, concluding that in light of *Dastar Corp. v. Twentieth Century Fox Film Corp.*, 539 US 23 (2003), and *Baden Sports, Inc. v. Molten USA, Inc.*, 556 F.3d 1300 (Fed. Cir. 2009), Dawgs had failed to state a cause of action under Section 43(a)(1). The district court determined that there was no cause of action because Crocs’ use of terms such as “patented,” “proprietary,” and “exclusive” were directed to Crocs “inventorship” of its products rather than nature, quality, or characteristics of its products.

The Federal Circuit reversed the district court’s ruling, reasoning that the case was distinguishable from *Dastar* and *Baden*. The Federal Circuit noted that Crocs conceded it did not possess patent protection for “Croslite,” and further rejected the district court’s reasoning that Crocs’ false claims were directed to the originality and inventorship of “Croslite.” According to the Federal Circuit, a cause of action under the Lanham Act arose because Crocs falsely claimed that “Croslite” was patented to mislead its consumers into thinking the primary material in Crocs possessed tangible benefits. The Federal Circuit agreed with Dawgs allegation that Crocs promotional materials “deceive consumers and potential consumers into believing that all other molded footwear ... is made of inferior material compared to Crocs’ molded footwear.” Ultimately, the Federal Circuit reversed and remanded the case back to the district court for further proceedings.

This case is important for both consumers and competitors alike as it strengthens consumer protections by preventing false and misleading advertising claims, and unfair competition. Furthermore, due to the various methods of damages available under the Lanham Act, it is imperative that companies review their marketing and promotional materials to ensure that the company does not falsely advertise patent protection on a product feature.