



International Trade Commission

[Investigation No. 337-TA-1270]

Certain Casual Footwear and Packaging Thereof; Notice of Final Determination of No Violation by Active Respondents; Issuance of Default Remedial Orders; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (“Commission”) has determined that there is no violation of section 337 of the Tariff Act of 1930, as amended, in this investigation by active respondents Hobby Lobby Stores, Inc. (“Hobby Lobby”), Quanzhou ZhengDe Network Corp. d/b/a Amoji (“Amoji”), and Orly Shoe Corp. (“Orly”). The Commission has further determined to issue a limited exclusion order (“LEO”) against defaulting respondents La Modish Boutique (“La Modish”), Star Bay Group Inc. (“Star Bay”), Huizhou Xinshunzu Shoes Co., Ltd. (“Huizhou”), and Jinjiang Anao Footwear Co., Ltd. (“Anao”) and cease and desist orders against defaulting respondents La Modish and Star Bay. This investigation is hereby terminated.

FOR FURTHER INFORMATION CONTACT: Carl P. Bretscher, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone (202) 205-2382. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.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 July 9, 2021, based on a complaint filed by Crocs, Inc. of Broomfield, Colorado (“Crocs”). 86 FR 36303-304 (July 9, 2021). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”), in the importation into the United States, sale for importation, or sale in the United States after importation of certain casual footwear and packaging thereof by reason of infringement, false designation of origin, and dilution of one of more of U.S. Trademark Registration Nos. 5,149,328; 5,273,875 (collectively, the “3D Marks”); and 3,836,415 (“the Word Mark”) (all collectively, “the Asserted Marks”). *Id.* The complaint alleges that a domestic industry exists, and that the threat or effect of certain alleged violations is to destroy or substantially injure an industry in the United States. *Id.*

The Commission’s notice of investigation named numerous respondents, including: Hobby Lobby of Oklahoma City, Oklahoma; Amoji of Quanzhou, Fujian Province, China; Skechers USA, Inc. of Manhattan Beach, California (“Skechers”); SG Footwear Meser Grp. Inc. a/k/a S. Goldberg & Co. of Hackensack, New Jersey (“SG Footwear”); Cape Robbin Inc. of Pomona, California (“Cape Robbin”); Dr. Leonard’s Healthcare Corp. d/b/a Carol Wright of Edison, New Jersey (“Dr. Leonard’s”); Fullbeauty Brands Inc. d/b/a Kingsize of New York, New York (“Fullbeauty”); Legend Footwear, Inc. d/b/a/ Wild Diva of City of Industry, California (“Wild Diva”); Fujian Huayuan Well Import and Export Trade Co., Ltd. of Fuzhou, Fujian Province, China (“Fujian”); Yoki Fashion International LLC of New York, New York (“Yoki”); Bijora, Inc. d/b/a Akira of Chicago, Illinois (“Akira”); Hawkins Footwear, Sports, Military & Dixie Store of Brunswick, Georgia (“Hawkins”); Shoe-Nami Inc. of Gretna, Louisiana (“Shoe-Nami”); PW Shoes, Inc. a/k/a P&W of Maspeth, New York (“PW”); 718Closeouts of Brooklyn, New York (“718Closeouts”); Crocsky of Austin, Texas (“Crocsky”); Hobibear Shoes and Clothing Ltd. of Brighton, Colorado (“Hobibear”); Ink Tee of Los Angeles, California (“Ink Tee”); Maxhouse Rise Ltd. of Hong Kong, China (“Maxhouse”); La Modish of West Covina, California; Loeffler Randall Inc. of New York, New York (“Loeffler Randall”); Star Bay of

Hackensack, New Jersey; and Royal Deluxe Accessories, LLC of New Providence, New Jersey (“Royal Deluxe”). The Office of Unfair Import Investigations (“OUII”) was also named as a party.

On November 17, 2021, the Commission amended the complaint and notice of investigation to add certain new respondents, including Orly of New York, New York; Mould Industria de Matrices Ltda. d/b/a/ Boaonda of Brazil (“Boaonda”); Dongguan Eastar Footwear Enterprises Co., Ltd. of Guangzhou City, China (“Eastar”); KGS Sourcing Ltd. of Hong Kong, China (“KGS”); Fujian Wanjiaxin Industrial Developing, Inc. a/k/a Fujian Wanjiaxin Light Industrial Developing, Inc. of Quanzhou City, China (“Wanjiaxin”); Anao of Jinjiang City, China; Walmart Inc. of Bentonville, Arkansas (“Walmart”); and Huizhou of Huizhou City, China, and to terminate the investigation with respect to Crocsky, Hobibear, and Ink Tee. Order No. 30 (Oct. 21, 2021), *unreviewed by Comm’n Notice* (Nov. 17, 2021).

The Commission subsequently terminated the investigation with respect to various respondents on the basis of settlement agreements or consent orders. *See* Order No. 12 (Aug. 11, 2021) (Skechers), *unreviewed by Comm’n Notice* (Aug. 24, 2021); Order No. 16 (Aug. 26, 2021) (SG Footwear) and Order No. 17 (Aug. 26, 2021) (Cape Robbin), *unreviewed by Comm’n Notice* (Sept. 24, 2021); Order No. 20 (Sept. 1, 2021) (Dr. Leonard’s), *unreviewed by Comm’n Notice* (Sept. 29, 2021); Order No. 22 (Sept. 9, 2021) (Fullbeauty) and Order No. 23 (Sept. 9, 2021) (Wild Diva), *unreviewed by Comm’n Notice* (Oct. 7, 2021); Order No. 24 (Sept. 17, 2021) (Fujian), *unreviewed by Comm’n Notice* (Oct. 7, 2021); Order No. 25 (Sept. 22, 2021) (Yoki), *unreviewed by Comm’n Notice* (Oct. 7, 2021); Order No. 26 (Sept. 28, 2021) (Akira), *unreviewed by Comm’n Notice* (Oct. 27, 2021); Order No. 27 (Oct. 6, 2021) (Hawkins), *unreviewed by Comm’n Notice* (Oct. 29, 2021); Order No. 32 (Nov. 1, 2021) (Shoe-Nami) and Order No. 33 (Nov. 1, 2021) (PW), *unreviewed by Comm’n Notice* (Nov. 29, 2021); Order No. 34 (Nov. 10, 2021) (718 Closeouts), *unreviewed by Comm’n Notice* (Dec. 6, 2021); Order No. 39 (Jan. 11, 2022) (Eastar), *unreviewed by Comm’n Notice* (Feb. 4, 2022); Order No. 46 (March

3, 2022) (Maxhouse, Wanjiaxin), *unreviewed by* Comm'n Notice (March 18, 2022); Order No. 49 (March 15, 2022) (Boaonda), *unreviewed by* Comm'n Notice (April 1, 2022); Order No. 54 (April 22, 2022) (Royal Deluxe), *unreviewed by* Comm'n Notice (May 17, 2022); Order No. 56 (May 6, 2022) (Loeffler Randall), *unreviewed by* Comm'n Notice (May 27, 2022); Order No. 81 (Sept. 28, 2022) (Walmart), *unreviewed by* Comm'n Notice (Oct. 20, 2022). The Commission also terminated the investigation with respect to KGS for good cause. Order No. 40 (Feb. 1, 2022), *unreviewed by* Comm'n Notice (Feb. 22, 2022).

On June 10, 2022, the Commission found that respondents La Modish, Star Bay, Huizhou, and Anao (“Defaulting Respondents”) were in default and waived their rights to appear, to be served with documents, and to contest the allegations in this investigation, pursuant to 19 CFR 210.16(b). Order No. 58 (May 20, 2022), *unreviewed by* Comm'n Notice (June 10, 2022).

On September 13-16, 2022, the presiding administrative law judge (“ALJ”) held an evidentiary hearing with Crocs, OUII, and the remaining respondents Orly, Hobby Lobby (collectively, “the Orly Respondents”), and Amoji (all collectively, “Respondents”).

On January 9, 2023, the ALJ issued the subject final ID, finding no violation of section 337 because: (1) Crocs did not prove that Respondents infringe the Asserted Marks; (2) Crocs did not prove that Respondents falsely designate the origin of their accused products or cause unfair competition; (3) Crocs did not prove that Respondents dilute the Asserted Marks by blurring or tarnishment; (4) the 3D Marks are invalid for lack of secondary meaning; and (5) Crocs waived its infringement contentions against Defaulting Respondents. ID at 71-72, 83-86, 148-49. The ID also finds that Crocs has satisfied both the technical and economic prongs of the domestic industry requirement. *Id.* at 130, 149. The ID further finds that Respondents failed to prove that the 3D Marks are invalid as functional or that the Word Mark is invalid as generic. *Id.* at 128-29, 149. The ID takes no position on Crocs’s alleged injury or Respondents’ fair use defense. *Id.* at 129-30.

On January 13, 2023, the Commission issued a notice soliciting submissions from the public on the public interest implications of any remedial orders the Commission may issue in this case. 88 FR 3437 (Jan. 19, 2023). On February 9, 2023, non-party Joybees, LLC, a U.S. seller of footwear, filed a statement opposing issuance of a general exclusion order, (“GEO”). EDIS Doc. ID 790010 (Feb. 9, 2023). The Commission also received a letter dated June 14, 2023, from U.S. Representative Brittany Pettersen (CO-7), who represents the congressional district in which Crocs is headquartered. EDIS Doc. ID 798554 (June 14, 2023).

On April 5, 2023, the Commission determined to review the ID’s findings that: (1) Crocs waived its infringement contentions against the lined version of Orly’s Gators; (2) the 3D Marks are not entitled to the presumption of validity and are invalid for lack of secondary meaning; (3) Crocs waived its infringement contentions against Defaulting Respondents; (4) subject matter jurisdiction; (5) likelihood of confusion; (6) false designation of origin; (7) dilution; and (8) the technical and economic prongs of domestic industry. Comm’n Notice at 3-4 (Apr. 5, 2023); 88 FR 21712-15 (Apr. 11, 2023). The Commission determined not to review the remaining findings in the ID.

On April 19, 2023, Crocs, the Orly Respondents, and OUII filed their responses to the Commission’s notice of review. On April 26, 2023, the parties filed their respective replies. Amoji did not file its own response or join the briefing by the Orly Respondents.

Having reviewed the ID, the parties’ submissions, and the evidence of record, the Commission has determined to affirm and adopt the ID’s findings that Respondents have not infringed or diluted any of the Asserted Marks, falsely designated the origin of their Accused Products, or engaged in unfair competition. The Commission has determined to reverse the ID’s finding that Crocs waived its infringement contentions with respect to the lined versions of the accused Orly Gators and find instead that Crocs failed to prove infringement by the lined Orly Gators.

The Commission takes no position on Orly's alleged first sale in April 2016, the presumption of validity, secondary meaning, injury, fair use, and the technical and economic prongs of the domestic industry requirement.

The Commission has further determined to issue an LEO to Defaulting Respondents and CDOs to defaulting respondents La Modish and Star Bay pursuant to section 337(g)(1). 19 U.S.C. 1337(g)(1).

The Commission's reasoning in support of its determinations is set forth more fully in its opinion issued herewith. Commissioner Kearns dissents from the Commission's finding of no violation of section 337 for the reasons detailed in his dissenting views issued herewith.

The investigation is hereby terminated.

The Commission vote for this determination took place on September 14, 2023.

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 Part 210 of the Commission's Rules of Practice and Procedure (19 CFR Part 210).

By order of the Commission.

Issued: September 14, 2023.

Katherine Hiner,

Supervisory Attorney.

[FR Doc. 2023-20345 Filed: 9/19/2023 8:45 am; Publication Date: 9/20/2023]