IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CIVIL CASE NO.: _____

CROCS, INC., a Delaware corporation,

Plaintiff,

v.

EVACOL USA LLC, a Florida limited liability company; and EVACOL LTDA., a Colombian corporation,

Defendants.
_____/

PLAINTIFF CROCS, INC.'S COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Crocs, Inc. ("Crocs"), for its Complaint against Defendants Evacol USA LLC and Evacol Ltda. (collectively, "Evacol"), 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. Evacol manufactures, uses, offers for sale, sells, and/or imports footwear throughout the United States that infringe Crocs's rights in Claim 1 of U.S. Patent No. 6,993,858 B2 for "Breathable Footwear Pieces" ("the '858 Patent), U.S. Design Patent No. D691,354 for "Footwear" ("the '354 Patent"), and U.S. Design Patent No. D610,784 for "Footwear" ("the '784 Patent").

3. Evacol's products are not manufactured or authorized by Crocs, nor is Evacol connected or affiliated with Crocs in any way. This action seeks injunctive relief and monetary damages to remedy the harm to Crocs caused by Evacol's infringement of Crocs's patent rights.

PARTIES, JURISDICTION AND VENUE

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

5. On information and belief, Evacol Ltda. is a Colombian corporation that was founded in 2006, with its principal place of business at Carrera 23 13 100 Yumbo Valle, Colombia. On information and belief, Evacol Ltda. designs, manufactures, and provides to the United States and other world markets (including the Caribbean Islands, and Central and South America) a wide range of footwear. It sells and distributes its products through some sixty-plus retail stores outside the United States, and, on information and belief, imports footwear into the United States for sale by, inter alia, Evacol USA LLC.

6. Evacol USA LLC is a Florida limited liability company with a principal place of business at 590 NW 26th Street, Miami, Florida 33127-4334. On information and belief, Evacol USA LLC is a subsidiary of Evacol Ltda., and recently opened its first retail store in the United States in Plantation, Florida in November 2015, in order to extend distribution of Evacol Ltda.'s footwear products to the United States market. Evacol USA LLC also sells and distributes footwear products online throughout the United States at www.evacolusa.com.

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 Evacol comports with the laws of the State of Florida and the constitutional requirements of due process because Evacol has committed and continues to commit 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, Evacol derives substantial revenue from the sale of infringing products in this District, expects its actions to have consequences in this District, and derives substantial revenue from interstate and international commerce.

9. 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, Evacol transacts business within this District, imports into this District, and offers 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.

10. Crocs is a designer, manufacturer, and marketer of Crocs™-branded footwear for men, women, and children. This footwear incorporates 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 www.crocsrx.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.

THE ’354 PATENT

13. On October 15, 2013, the U.S. Patent and Trademark Office duly, properly, and legally issued U.S. Design Patent No. D691,354, entitled “Footwear,” with Crocs as the assignee. A copy of the ’354 Patent is submitted with this Complaint as Exhibit B.

THE ’784 PATENT

14. On March 2, 2010, the U.S. Patent and Trademark Office duly, properly, and legally issued U.S. Design Patent No. D610,784 for “Footwear,” with Crocs as the assignee. A copy of the ’784 Patent is submitted with this Complaint as Exhibit C.

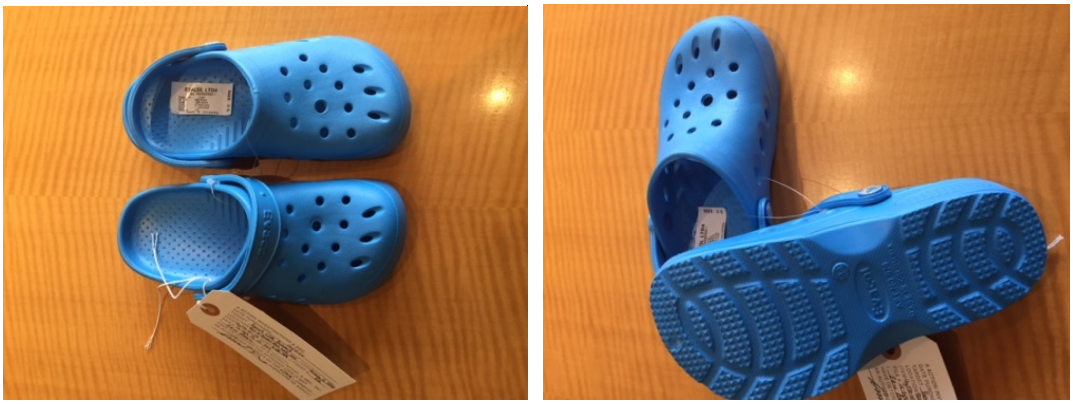
EVACOL’S SALES OF INFRINGING FOOTWEAR

15. On information and belief, Evacol opened a retail store in November 2015 in Plantation, Florida, where Evacol sells a line of footwear, including clogs and sandals for men, women, children, and infants. In addition, Evacol operates an online storefront at www.evacolusa.com through which, on information and belief, the same footwear is sold throughout the United States. On information and belief, Evacol’s Plantation, Florida store and its online website offer to sell and sell footwear that infringes Claim 1 of the ’858 Patent, the ’354 Patent, and/or the ’784 Patent.

16. On information and belief, Evacol manufactures, uses, offers for sale, sells, and/or imports footwear called the Uniform Clog-REF-078, Children Clog-REF-084-01, Uniform Clog-

REF-073, Infant Clog-REF-070, Men's Fashion Clog REF-085, Infant Clog REF-133-02, Clog REF-103, Clog REF-066, and Women Sperry-Style093.

17. Evacol's Uniform Clog-REF-078, Children Clog-REF-084-01, Uniform Clog-REF-073, Infant Clog-REF-070, Men's Fashion Clog REF-085, Infant Clog REF-133-02, Clog REF-103, and Clog REF-066 all infringe Claim 1 of the '858 Patent.



Pictures of Evacol's Infant Clog-REF-070 purchased from Evacol's Plantation, Florida retail store

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Pictures of Evacol's Children Clog-REF-084-01 purchased from Evacol's Plantation, Florida retail store



Pictures of Evacol's Men's Fashion Clog REF-085 purchased from Evacol's Plantation, Florida retail store

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Pictures of Evacol's Infant Clog REF-133-02 purchased from Evacol's Plantation, Florida retail store

…



Pictures of Evacol's Clog REF-103 purchased from Evacol's Plantation, Florida retail store

18. Evacol's Women Sperry-Style093 infringes the '354 Patent.



Pictures of Evacol's Women Sperry-Style093 purchased from Evacol's Plantation, Florida store

19. Evacol's Children Clog REF-084-01 and Uniform Clog-REF-078 infringe the '784 Patent.



Pictures of Evacol's Children Clog-REF-084-01 purchased from Evacol's Plantation, Florida retail store

20. The infringing footwear products that Evacol 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 of Evacol's actions in any way. Crocs has never provided any authorization, license, assignment, or other permission to Evacol to use Claim 1 of the '858 Patent, the '354 Patent, or the '784 Patent. Evacol is not associated with Crocs in any way.

21. Evacol's continued sale, offering for sale, importation, and distribution of its footwear, including, without limitation, the footwear set forth above, infringes Claim 1 of the '858 Patent, the '354 Patent, and/or the '784 Patent. These infringing actions have resulted in irreparable harm to Crocs for which Crocs has no adequate remedy at law.

CLAIMS FOR RELIEF

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

22. Crocs hereby incorporates paragraphs 1-21 above as if fully set forth herein.

23. Evacol has manufactured, used, offered for sale, sold, and/or imported, and continues to manufacture, use, offer to sell, sell, and/or import footwear products, including but not limited to Evacol's Uniform Clog-REF-078, Children Clog-REF-084-01, Uniform Clog-REF-073, Infant Clog-REF-070, Men's Fashion Clog REF-085, Infant Clog REF-133-02, Clog REF-103, and Clog REF-066 that infringe Claim 1 of the '858 Patent, in violation of 35 U.S.C. § 271(a).

24. As a result of Evacol's infringement, Crocs has lost goodwill with its customers.

25. As a result of Evacol's 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.

26. Evacol's continued infringement with full knowledge of the '858 Patent and Crocs's rights therein is willful.

27. Evacol's 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.

28. Evacol's infringement of Claim 1 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 preliminary and permanent injunctive relief pursuant to 35 U.S.C. § 283.

Infringement of the '354 Patent -- 35 U.S.C. § 1, *et seq.*

29. Crocs hereby incorporates paragraphs 1-21 above as if fully set forth herein.

30. Evacol has manufactured, used, offered for sale, sold, and/or imported, and continues to manufacture, use, offer to sell, sell, and/or import footwear products, including but not limited to Evacol's Women Sperry-Style093, that infringe the '354 Patent, in violation of 35 U.S.C. § 271(a).

31. As a result of Evacol's infringement, Crocs has lost goodwill with its customers.

32. As a result of Evacol's infringement of Crocs's rights in the '354 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 Evacol's profits pursuant to 35 U.S.C. § 289.

33. Evacol's continued infringement with full knowledge of the '354 Patent and Crocs's rights therein is willful.

34. Evacol's willful infringement of Crocs's rights in the '354 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.

35. Evacol's infringement of the '354 Patent has caused irreparable harm to Crocs, and will continue to do so unless enjoined. As a result, Crocs is entitled to preliminary and permanent injunctive relief pursuant to 35 U.S.C. § 283.

Infringement of the '784 Patent -- 35 U.S.C. § 1, *et seq.*

36. Crocs hereby incorporates paragraphs 1-21 above as if fully set forth herein.

37. Evacol has manufactured, used, offered for sale, sold, and/or imported, and continues to manufacture, use, offer to sell, sell, and/or import footwear products, including but not limited to Evacol's Children Clog-REF-084-01 and Uniform Clog-REF-078, that infringe the '784 Patent, in violation of 35 U.S.C. § 271(a).

38. As a result of Evacol's infringement, Crocs has lost goodwill with its customers.

39. As a result of Evacol's infringement of Crocs's rights in the '784 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 Evacol's profits pursuant to 35 U.S.C. § 289.

40. Evacol's continued infringement with full knowledge of the '784 Patent and Crocs's rights therein is willful.

41. Evacol's willful infringement of Crocs's rights in the '784 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.

42. Evacol's infringement of the '784 Patent has caused irreparable harm to Crocs, and will continue to do so unless enjoined. As a result, Crocs is entitled to preliminary and permanent injunctive relief pursuant to 35 U.S.C. § 283.

PRAYER FOR RELIEF

WHEREFORE, Crocs prays for entry of judgment granting:

A. A preliminary and permanent injunction restraining Evacol, 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 footwear that infringes Claim 1 of the ’858 Patent, the ’354 Patent, and/or the ’784 Patent;

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

C. A declaration that Evacol’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;

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 Evacol pursuant to 35 U.S.C. § 284 as a result of Evacol’s 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.

Dated: December 23, 2015

Respectfully Submitted,

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