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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

16 U.S.A. DAWGS, INC., a Nevada corporation,
17 Plaintiff,
18
19 vs.
20 CROCS, INC., a Delaware corporation; and
21 DOES 1-10,
22 Defendant.
23
24
25
26
27
28

Case No. 2:14-cv-1461

**CIVIL COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF FOR
VIOLATIONS OF:**

**1) SECTION TWO OF THE SHERMAN
ACT – ACTUAL MONOPOLIZATION; 2)
SECTION TWO OF THE SHERMAN ACT
– ATTEMPT TO MONOPOLIZE; 3)
SECTION 3 OF THE CLAYTON ACT;
4) INTENTIONAL INTERFERENCE
WITH PROSPECTIVE ECONOMIC
ADVANTAGE AND ACTUAL
CONTRACTUAL RELATIONS; AND 5)
NEVADA UNFAIR TRADE PRACTICES
ACT (NEV. REV. STAT. § 598A)**

[JURY DEMAND]

1 Plaintiff U.S.A. Dawgs, Inc. (“DAWGS”) files this Complaint against defendant Crocs,
2 Inc. (“CROCS”) to secure damages and injunctive relief, and demanding trial by jury, claims and
3 alleges as follows:

4 **I.**

5 **SUMMARY OF THE CASE**

6 1. This lawsuit centers around defendant CROCS’ deliberate and continuing attempt
7 to monopolize and its actual monopolization of the market for ethyl vinyl acetate (“EVA”) fully
8 molded ventilated clog-type casual shoes in the United States. CROCS possesses a market share
9 exceeding 90% in this market. CROCS has monopolized, or at least attempted to monopolize, the
10 market for EVA clog-type footwear products by first accumulating a number of patents, no matter
11 how weak or narrow, and then asserting these patent rights far beyond the narrow scope of the
12 actual patent claims through instituting a series of sham lawsuits in order to slowly litigate its
13 competition out of the market. These ill-founded, bad-faith patent infringement actions, and other
14 accompanying anticompetitive conduct, constitute violations of the antitrust laws.

15 2. Defendant CROCS conceived and implemented a multifaceted anticompetitive
16 scheme to exclude plaintiff DAWGS from this growing and lucrative market. DAWGS has
17 developed, manufactured, and sold a line of competing and significantly lower-priced EVA clog
18 footwear products. To thwart DAWGS’ lower-priced competition, defendant CROCS has engaged
19 in a campaign that consists of at least the following anticompetitive and monopolistic acts:

- 20 (a) knowingly obtaining fraudulently procured patents;
21 (b) use of knowingly sham patent litigation to thwart competitors;
22 (c) knowingly using sham patents to secure a General Exclusion Order
23 preventing the importation and sale of competitive products; and
24 (d) threatening or actually refusing to deal with distributors or others carrying
25 DAWGS’ footwear products.

26 3. As a consequence of CROCS’ conduct, competition in this product market has been
27 suppressed and virtually eliminated, and consumers in this market have suffered a loss of choice
28 and consumers have been required to pay higher, supracompetitive prices for EVA clog-type

1 footwear to CROCS than would otherwise be the case in a properly functioning and competitive
2 market. Plaintiff DAWGS, the competitive market, and American consumers have suffered
3 antitrust injury by reason of CROCS' unlawful, exclusionary, and trade-restraining conduct.

4 **II.**

5 **JURISDICTION AND VENUE**

6 4. This Complaint is filed and this action is instituted under Sections 4 and 16 of the
7 Clayton Act (15 U.S.C. §§ 15, 26) to recover the damages caused by, and to secure injunctive
8 relief against, defendant CROCS for its past and continuing violations of Section 2 of the Sherman
9 Act (15 U.S.C. § 2) and Section 3 of the Clayton Act (15 U.S.C. § 14), as alleged herein.

10 5. This Court has original and exclusive jurisdiction over the subject matter of this
11 civil action under 15 U.S.C. § 15 and 28 U.S.C. §§ 1331, 1332, and 1337. This Court may exercise
12 supplemental jurisdiction over claims based upon Nevada law under 28 U.S.C. § 1367. Defendant
13 CROCS maintains stores and transacts business on a systematic and continuous basis within this
14 District and may be found here within the meaning of 15 U.S.C. §§ 15, 22 and 28 U.S.C. § 1391.
15 Further, the unlawful acts alleged herein were performed and occurred in material part within this
16 District.

17 **III.**

18 **INTERSTATE COMMERCE**

19 6. The actions complained of herein have, and will, restrain and adversely affect
20 interstate commerce in that defendant CROCS sells its products and services across state lines.
21 Further, defendant CROCS purchases goods and supplies in interstate commerce.

22 **IV.**

23 **THE PARTIES**

24 7. Defendant CROCS is a corporation organized and existing under the laws of
25 Delaware with its corporate headquarters located in Niwot, Colorado.

26 8. Plaintiff DAWGS is a corporation organized and existing under the laws of Nevada
27 with its principal place of business located at 4120 W. Windmill Lane, Las Vegas, Nevada 89139.

28

9. Plaintiff DAWGS is ignorant of the true names and capacities of defendants sued herein as DOES 1 through 10, and therefore sues defendants by such fictitious names. Plaintiff will amend this Complaint to allege their true names and capacities as they are ascertained. Plaintiff is informed and believes, and, based on such information and belief, alleges that each of the fictitiously named defendants is responsible in some manner for the injuries to plaintiff as alleged herein. Plaintiff further alleges that its injuries were proximately caused by each and all such defendants.

V.

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

10. The anticompetitive and exclusionary practices implemented by CROCS induced CROCS' and other distributors/retailers not to do business with or purchase footwear products from DAWGS. As a direct and proximate result of CROCS' unlawful conduct, various distributors have refused to deal with DAWGS, cancelled pending orders, and/or returned product that had been purchased from DAWGS.

A. Origin of the EVA Clog Shoe

11. Defendant CROCS is the leading manufacturer and seller of a wide variety of EVA fully molded clog-type footwear products. CROCS has been engaged in the manufacturing and sales of a variety of footwear products including, predominantly, EVA fully molded footwear in the shape of a clog since 2001. To launch their company, the founders of CROCS decided to market a shoe that had already been developed and was already being manufactured and distributed by Foam Creations, Inc. ("FOAM") (previously known as Fin Project, N.A., a Canadian company) since as early as 1999. FOAM obtained the design to the foam clog with ventilated holes (the "original EVA clog") from Ettore Battiston of the Italian plastics design corporation L'Artigiana Stampi in 1999. FOAM named the Original EVA Clog the "Aqua Clog." FOAM would later acquire rights to the design through a written copyright assignment between Finproject N.A. and Ettore Battiston and L'Artigiana Stampi effective as of October 1, 2000. Beginning in 1999 or 2000, FOAM manufactured and supplied the Original EVA Clog shoe to a number of retailers who then sold the shoe under various names including: Explorer, Waldies,

1 Rebound, Aqua Garden Clog, and others.

2 12. Since 2002, CROCS has been misleading the public and consumers by claiming
3 that their footwear is made of a exclusive and proprietary closed-cell resin that they call
4 “Croslite,” when, in fact, “Croslite” is merely the common ethyl vinyl acetate used by many
5 footwear companies around the world, including plaintiff DAWGS.

6 13. CROCS debuted its “Beach” model shoe at the Ft. Lauderdale Boat Show in Fall
7 2002 where it openly marketed, promoted, and sold hundreds of pairs of the “Beach” model shoe.

8 14. DAWGS has been manufacturing and selling a variety of footwear, including EVA
9 clog-type footwear, under the brand names DAWGS, DOGGERS, HOUNDS and others in the
10 United States since 2006.

11 **B. CROCS’ Purported Patents**

12 15. On February 7, 2006, the U.S. Patent and Trademark Office (“USPTO”) issued
13 U.S. Patent No. 6,993,858 B2 “Breathable Footwear Pieces,” with CROCS as the assignee (the
14 “’858 Patent”). The ’858 Patent contained diagrams and descriptions of the Original EVA Clog as
15 designed by Battiston and manufactured since at least as early as 1999.

16 16. Scott Seamans claimed to have invented the entire shoe, including the base of the
17 shoe and its particular design and functional features, such as a substantially vertical toe region
18 containing ventilators extending up a majority of the height of the vertical portion, an insole
19 surface containing a raised pattern extending throughout the insole surface, a decorative pattern of
20 raised bumps, and a bottom surface of the shoe outsole having front and rear tread patterns, among
21 other claims. Each and every functional feature disclosed in the patent application, except the heel
22 strap, already existed in the Original EVA Clog, which had been designed, manufactured, and sold
23 long prior to Seamans and CROCS “discovering” the shoe in 2001. Straps have existed for many
24 years on a wide variety of footwear, including clogs and sandals, such as the Calzuro clog
25 designed and sold in Italy in the 1980s featuring a pivoting strap attached by a rivet, a
26 substantially vertical toe region containing ventilators extending up a majority of the height of the
27 vertical portion, an insole surface containing a raised pattern extending throughout the insole
28 surface, and a bottom surface of the shoe outsole having front and rear tread patterns. Further, a



1 single piece elastically deformable plastic shoe featuring a pivoting strap, ventilated holes, and
 2 patterns of raised bumps on the insole surface, are disclosed and described in Italian (utility)
 3 Patent 00245068 filed in June 1998 and granted in March 2002.

4 17. In July 2002, CROCS had no shoe product, yet FOAM offered CROCS the right to
 5 distribute FOAM's then-existing Original EVA Clog with heel strap in the United States. When
 6 Seamans and CROCS subsequently filed patent applications directed to this technology and
 7 design, CROCS knew it had no right to claim inventorship or assert novelty and non-obviousness
 8 relating to its products or designs.

9 18. Seamans also claimed in the patent application process to have invented the
 10 material components of the EVA foam shoe that had been previously created and trademarked as
 11 Levirex by FINPROJECT, N.A. in 1999, as well as the molding for the foam resin shoes that had
 12 been designed and sold to FINPROJECT by L'Artigiana Stampi as early as 1999. These false
 13 claims, made under oath to the USPTO, were ultimately rejected by the Patent Examiner and
 14 failed to issue as a patent. Seamans and CROCS willfully failed to disclose to the USPTO the
 15 existence of the Original EVA Clog, the prior sales of the Original EVA Clog with heel strap, or
 16 the identity of the inventor of the Original EVA Clog, Mr. Ettore Battiston. Seamans is the only
 17 listed inventor on the '858 Patent.

18 19. CROCS' willful false statements and failure to disclose to the USPTO the prior
 19 existence of the Original EVA Clog, the assignment of the design of the Original EVA Clog from
 20 Battiston to Fin Project to CROCS, and the prior sales of the shoe embodying the '858 claims,
 21 each constitute fraud on the USPTO and serve as sufficient grounds to invalidate the '858 Patent.

22 20. On March 28, 2006, the USPTO issued U.S. Patent No. D 517,789 "Footwear,"
 23 with CROCS as the assignee (the "'789 Patent"). The '789 Patent contains diagrams of the base
 24 shoe that are substantially similar to the diagrams that were assigned from Battiston to FOAM in
 25 2000. The shoe depicted in the '789 Patent was thus not new and inventive nor invented and
 26 designed by Seamans or CROCS. Seamans falsely claims to be the sole inventor of the design
 27 reflected in the '789 Patent. CROCS' willful false statements and failure to disclose to the USPTO
 28 the identity of the known inventor of the base shoe, the prior existence of the Original EVA Clog,



1 the assignment of the design of the Original EVA Clog from Battiston to Fin Project to CROCS,
2 and the prior sales of the shoe constitute fraud on the USPTO, and each serves as sufficient basis
3 to invalidate the '789 Patent.

4 21. CROCS also fraudulently concealed that the shoe depicted in the '858 Patent and
5 the '789 Patent were on sale throughout North America and around the world for years prior to
6 CROCS filing the patent applications. Even so, CROCS failed to disclose this material fact to the
7 USPTO. Indeed, CROCS made public use and sold its own "Beach" model shoe, as represented in
8 the '858 Patent and the '789 Patent, more than one year prior to filing the patent applications and
9 CROCS similarly fraudulently concealed these actual prior sales from the USPTO.

10 22. CROCS' willful failure to disclose material facts to the USPTO, *e.g.*, the prior
11 existence of the Original EVA Clog, the assignment of the design of the Original EVA Clog from
12 Battiston to Fin Project to CROCS, and the prior public use and sales of its own shoe, constitute
13 fraud on the USPTO, and serves as sufficient grounds to invalidate these Patents.

14 23. At the time the applications for the '858 Patent and the '789 Patent, during the
15 entire application process, at the time the patents were issued, and at all times since, CROCS, its
16 founders, and its senior officers made fraudulent statements and fraudulently concealed material
17 facts relating to the claims contained in the patent applications, the true origin of the Original EVA
18 Clog, its true inventor and the existence of prior public use and sales more than one year prior to
19 filing. CROCS acted at all times knowing that these patents were invalid and unenforceable.

20 24. CROCS has been unable to secure patents similar to the '858 Patent or the '789
21 Patent in any other country outside the U.S., primarily because of the well-known existence of
22 prior sales, the widely-recognized existence of prior art, and the established identity of the true and
23 proper inventorship and origin of the shoe.

24 **C. CROCS' Sham Lawsuit Campaign**

25 25. On March 31, 2006, three days after the '789 Patent issued, CROCS filed a
26 Complaint with the International Trade Commission ("ITC") against Double Diamond
27 Distribution, Ltd., manufacturer and distributor of EVA Clog products under brand names
28 including DAWGS, DOGGERS, and HOUNDS, and other defendants, alleging infringement and



1 seeking a General Exclusion Order banning the importation and sale of EVA clog products based
2 on patents that CROCS clearly knew at the time to be invalid and unenforceable.

3 26. On April 3, 2006, six days after the '789 Patent issued, CROCS also filed a lawsuit
4 in the District of Colorado, Case No. 06-cv-00605-PAB-BNB against a number of entities alleging
5 infringement of patents even as CROCS clearly knew this patent to have been obtained by
6 withholding material information from the patent examiner (the "Colorado Action"). Among the
7 original defendants of the Colorado Action was Double Diamond Distribution, Ltd., a company
8 majority owned by shareholders of plaintiff DAWGS, and a manufacturer and distributor of EVA
9 Clogs and other footwear under the brand names DAWGS, DOGGERS, HOUNDS and others.

10 27. On August 4, 2012, CROCS amended its Complaint in the Colorado Action to
11 include U.S.A. DAWGS, Inc. as a named defendant. Due to the initiation of this objectively
12 baseless legal action, plaintiff DAWGS was forced to curtail its business activities and sustained
13 pecuniary injury as a result. On August 31, 2012 DAWGS filed an Answer and asserted
14 counterclaims, alleging among other things, non-compulsory claims for antitrust violations.

15 28. Even though the Patents were obtained because material information was
16 intentionally and fraudulently concealed from the USPTO, many of the then-existing EVA clog-
17 type shoe competitors ceased conducting business in the United States because of the undue and
18 inordinate cost of defending against CROCS' baseless patent litigations. These patent lawsuits
19 have included actions against Collective Licensing International, Effervescent, Inc., Gen-X Sports,
20 Inc., Holey Soles Holding Ltd, Australia Unlimited, Inc., Cheng's Enterprises, Inc., Inter-Pacific
21 Trading Corp, Pali Hawaii of Honolulu, Shaka Shoes, and Old Dominion Footwear, Inc.

22 **D. DAWGS' Patent Reexamination Proceedings**

23 29. On August 3, 2012 and August 24, 2012, Double Diamond Distribution, Ltd., filed
24 an application for *inter partes* reexamination with the USPTO against the '858 Patent and plaintiff
25 DAWGS filed an application for *inter partes* reexamination with the USPTO against the '789
26 Patent, respectively.

27 30. On August 8, 2012, only five days later, CROCS initiated another baseless lawsuit
28 against CVS Pharmacy, a known retailer of DOGGERS brand EVA clogs made by plaintiff



1 DAWGS (the “CVS lawsuit”). The CVS lawsuit was filed in bad faith, as it clearly lacked any
2 legitimate basis and was filed solely for the purpose of encumbering and distracting plaintiff
3 DAWGS, intentionally interfering with its business relationship with CVS, and causing it to incur
4 additional expense in continuing complex litigation. The sales complained of in the CVS lawsuit
5 were the same products and the same sales as previously and separately alleged in the Colorado
6 Action; nevertheless, CROCS knew that CVS was one of DAWGS’ largest customers and that this
7 filing would have a major impact on DAWGS’ continuing business dealings with CVS. This
8 retaliatory filing is a clear example of CROCS improperly using the coercive power of the judicial
9 system to interfere with DAWGS’ business and to manipulate and control the relevant market.
10 Although the complaint in the CVS lawsuit referred to activity allegedly occurring in Florida
11 while not asserting sales of allegedly infringing products in the State of Colorado (unsurprisingly,
12 as CVS Pharmacy is a Rhode Island Company and has no physical retail presence in Colorado),
13 CROCS nevertheless brought the action where it is headquartered in Colorado for the purpose of
14 improperly adding complexity and unnecessary expense to the litigation.

15 31. On April 29, 2013, the USPTO issued a non-final Office Action rejecting the single
16 claim of the ’789 Patent as unpatentable under 35 U.S.C. § 102(b). The Office Action found that
17 the design of the ’789 Patent appeared and was published on CROCS’ own websites more than
18 one year prior to the application for a patent in the United States and serves as an absolute,
19 statutory bar on CROCS obtaining a patent on the subject matter of the application. Despite this
20 rejection, CROCS did not stop prosecuting its litigation against plaintiff DAWGS. CROCS’ bad-
21 faith patent litigation is clearly a sham and has caused and continues to cause ongoing damage to
22 plaintiff DAWGS.

23 32. On July 29, 2013, Seamans and CROCS filed false statements including that
24 Seamans is “the sole inventor of the U.S. Design Patent No. D517,789” and that “the drawings of
25 the ’416 Application [Application No. US 10/602,416] and ’126 Application [Application No. US
26 Application No. 10/603,126] were renderings of a strapped shoe that [Seamans] designed.” Due
27 to the prior existence of the Battiston Drawings disclosing the elements of the shoe as it appears in
28 the ’789 Patent, these statements are false. CROCS, Seamans, and senior officials of CROCS



1 made these false statements in 2013, knowing them to be untrue, with malicious intent, for the
2 purpose of harming the reputation and business of DAWGS, and for knowingly continuing to
3 commit fraud to maintain an invalid patent.

4 **E. CROCS' Success**

5 33. CROCS boasts that it is the “world leader in innovative and casual footwear”
6 products. CROCS claims that it offers several “distinct” shoe collections, including its clog shoes
7 featuring Croslite foam material. CROCS further claims that since its inception in 2002, it has sold
8 more than 200 million pairs of shoes and reached \$1 billion in annual sales in 2011. CROCS is
9 reported to have reached a market value of \$6 billion in 2007. CROCS’ market share in the
10 relevant product market in the United States exceeds 90%.

11 **F. CROCS' Conduct Has Negatively Impacted DAWGS**

12 34. Shortly after CROCS started its aggressive sham patent litigation campaign in 2006
13 to intimidate its competitors into ceasing their businesses, sales of CROCS’ EVA clog have
14 accelerated. Indeed, contemporaneously with the granting of the ’858 and ’789 Patents that were
15 obtained by fraud, and the initiation of a broad based litigation offensive against all known
16 competitors, reaching far beyond the narrow scope of any intellectual property rights that CROCS
17 might have, CROCS sales roughly tripled from 2006 to 2007 and exploded from \$100 million per
18 year in 2006 to over \$1 billion today.

19 35. The ITC General Exclusion Order obtained by CROCS on patents known by
20 CROCS to have been fraudulently obtained has operated as a bar against the importation of EVA
21 clog-type products by DAWGS and all other competitors.

22 36. Due to CROCS’ actions and false and misleading statements in the prosecution of
23 the ’858 and ’789 Patents and, following the patent grants, CROCS’ subsequent and continuing
24 blatant patent misuse through misleading and impermissible assertions of patent rights far more
25 broad and comprehensive than the scope of narrow claims within the CROCS patent grants
26 themselves, DAWGS has incorrectly become widely deemed and stigmatized as a counterfeiter
27 and a provider of merely knock-off footwear. Today, on the popular website Wikipedia, “USA
28 DAWGS/Doggers” is listed under the heading “Counterfeit CROCS” on the CROCS Wikipedia

1 page entry, as though every shoe that Plaintiff DAWGS did, does, or could make necessarily
2 infringes CROCS' narrow, invalid, and fraudulently obtained patents.

3 37. By reason of CROCS' unlawful and anticompetitive conduct, DAWGS' brands and
4 reputation have been significantly tarnished. Consequently, DAWGS has been unable to sell to
5 major retailers and distributors.

6 VI.

7 CLAIMS FOR RELIEF

8 FIRST CLAIM FOR RELIEF

9 (Actual Monopolization in Violation of Section 2

10 of the Sherman Act (15 U.S.C. § 2))

11 38. Plaintiff DAWGS hereby alleges and incorporates by reference each allegation set
12 forth in Paragraphs 1 through 37 of this Complaint, as if set forth in full herein.

13 39. Section 2 of the Sherman Act (15 U.S.C. § 2) prohibits, *inter alia*, the willful
14 monopolization of any part of the trade or commerce among the States.

15 40. The relevant product market (or submarket) for antitrust purposes in this case is
16 defined as EVA fully molded ventilated clog-type casual footwear. "Clogs" are generally known
17 as a shoe with an open back and closed toe configuration with a relatively flat heel. There are no
18 reasonable substitutes for EVA clog-type footwear and consumers do not consider these clogs to
19 be reasonably interchangeable with other types of footwear, including but not limited to non-clog
20 EVA footwear. CROCS itself makes a distinction between its "Clog" shoes and "non-fully molded
21 casual footwear." Other distinctive characteristics identified by CROCS include: (a) "waterproof";
22 (b) "super comfortable"; (c) "ventilated"; (d) "breathable"; (e) non-slip sole; and (f) washable.
23 The cross-elasticity of demand between EVA fully molded ventilated clog footwear and other
24 types of footwear is extremely low. The relevant geographic market for antitrust purposes is the
25 United States.

26 41. CROCS is an entrenched player and dominates the market for EVA fully molded
27 ventilated clog-type footwear products in the United States, possessing a market share greater than
28 90%.



42. There are significant and high barriers to market entry that prevent other manufacturers from rapidly and meaningfully entering and/or expanding in this relevant market, which include, but are not limited to, the following:

(a) CROCS' dominant market position as a monopolist of EVA clog-type footwear products with a history of engaging in exclusionary and anticompetitive conduct to eliminate competition;

(b) purported patents, trademarks, and other intellectual property rights relating to EVA clog-type footwear products;

(c) substantial up-front capital investment required to penetrate and enter the relevant market;

(d) significant lead time to design EVA fully molded clog-type footwear products and develop a reputation such that the products can be successfully marketed and sold to buyers; and

(e) requirement of access to a nationwide sales and distribution network.

43. Defendant CROCS has monopoly power in the relevant market as reflected by, *inter alia*, its substantial share of the EVA clog-type footwear products market, its ability to exclude competition in the market, and its ability to charge supracompetitive prices for its EVA clog-type footwear products. Additionally, a significant number of other competitors have exited the market, including Collective Licensing International, Effervescent, Inc., Gen-X Sports, Inc., Holey Soles Holding Ltd, Australia Unlimited, Inc., Cheng's Enterprises, Inc., Inter-Pacific Trading Corp, Pali Hawaii of Honolulu, Shaka Shoes, and Old Dominion Footwear, Inc.

44. Defendant CROCS' monopoly position in the relevant market has been acquired and maintained through clearly intentional exclusionary conduct and patent misuse, as opposed to business acumen, historic accident, or by virtue of offering a superior product or service, greater efficiency, or lower prices.

45. While the patent system serves to encourage innovation, the patent system is subject to misuse. Meanwhile, the antitrust laws serve to foster competition. Consequently, the statutory rights afforded by patent law do not support the impermissible broadening of the



1 physical or temporal scope beyond that explicitly articulated in the claims of a patent grant, nor do
 2 intellectual property laws confer upon the patent owner immunity or a privilege to violate antitrust
 3 laws. The USPTO imposes on practitioners who apply for patents a duty to disclose information
 4 material to patentability. (37 C.F.R. § 1.56.) This duty applies to each individual associated with
 5 the filing and prosecution of a patent application. One who acted fraudulently in obtaining a patent
 6 necessarily knows that the patent is unenforceable. The '789 Patent and '858 Patent were the result
 7 of inequitable conduct, fraudulent conduct, or both, by individuals who owed a duty of candor to
 8 the USPTO. Furthermore, following a patent grant, the assertion of patent rights against
 9 competitors and others beyond the scope of the issued patent constitutes patent misuse and renders
 10 the underlying patent invalid and unenforceable. Thus, based on the acts of CROCS both prior to
 11 and subsequent to the issuance of the '898 Patent and the '789 Patent, these patents are each
 12 similarly invalid and unenforceable.

13 46. A defendant violates the antitrust laws in bringing a baseless suit to enforce a
 14 patent with knowledge that the patent is invalid, that the patent rights asserted extend beyond the
 15 scope of the patent grant, or that the defendant sued is not infringing, such that the litigation is
 16 conducted solely or at least primarily to suppress competition. CROCS initiated, prosecuted, and
 17 maintained objectively meritless patent infringement actions in bad faith with the knowledge that
 18 its patents were invalid and unenforceable. Patent applicants and patent holders are required to
 19 prosecute patent applications and maintain patents with candor, good faith, and honesty. Fraud
 20 includes an affirmative misrepresentation of a material fact, failure to disclose material
 21 information, concealment of material information, or submission of false material information,
 22 coupled with an intent to deceive. CROCS brought these sham actions in a clear attempt to
 23 directly interfere with DAWGS' business relationships. No litigant could reasonably expect
 24 success on the true merits.

25 47. The '789 Patent and the '858 Patent are invalid and unenforceable against plaintiff
 26 DAWGS, *inter alia*, by reason of inequitable conduct or fraud on the USPTO during the
 27 prosecution of these Patents, based on at least the following acts or omissions:

28 (a) CROCS failed to disclose the identity of Ettore Battiston, the original



1 inventor of the foam clog that was identical to the claimed invention in every detail except the
2 absence of a common pivoting strap, whose designs were first published in April 2002;

3 (b) CROCS failed to disclose prior art design and prior sales of a shoe known
4 as the Aqua Clog based on designs by Battiston and manufactured by Foam Creations, Inc.;

5 (c) CROCS failed to disclose Italian utility Patent No. 00245068 held by
6 BIHOS S.R.L. (an Italian shoe designer and manufacturer), issued March 19, 2002 (based on
7 Patent Application No. 00068 filed June 22, 1998), more than one year prior to the initial filing of
8 the CROCS applications for the patents-in-suit;

9 (d) CROCS misrepresented the true inventorship of both the '858 Patent and
10 the '789 Patent;

11 (e) CROCS failed to disclose the prior sales of a shoe substantially similar to
12 that depicted in the drawings for the '858 Patent and the '789 Patent more than one year before the
13 filing dates of the Applications for the patents in support by an entity known as "FINPROJECT,
14 N.A.";

15 (f) CROCS failed to disclose the prior art design and prior sales of a shoe
16 known as Waldies sold by Walden Sports in the United States, based on the Aqua Clog and made
17 by FINPROJECT, N.A., prior to the Applications for the patents-in-suit;

18 (g) CROCS failed to disclose the prior art design and prior sales of a shoe
19 known as the HOLEY SOLES soled by Holey Soles Holdings, Ltd., a Canadian company, based
20 on the Aqua Clog and made by FINPROJECT, N.A., prior to the Applications for the patents-in-
21 suit;

22 (h) CROCS failed to disclose and fraudulently concealed its own prior public
23 use, marketing and sales of the shoe embodied in the '858 Patent and the '789 Patent as early as
24 July 2002, prior to filing of the Applications for the patents-in-suit;

25 (i) CROCS improperly disclosed a website on-site reference to WALDIES
26 without providing a date of publication as required by MPEP § 707.05(e)(IV)(B), and improperly
27 included only the date of retrieval, so as to misleadingly suggest to the patent examiner that the
28

1 reference was subsequent to the June 23, 2003 patent Application filing date, and therefore not
2 prior art; and

3 48. These withheld references and facts were material to the patentability of each of the
4 '858 Patent and '759 Patent claims and renders each invalid and unenforceable.

5 49. Plaintiff DAWGS has the requisite standing to assert antitrust claims against
6 defendant CROCS because it is a participant and competitor in the relevant market and has
7 suffered damages as a direct consequence of CROCS' actions.

8 50. CROCS' anticompetitive scheme to monopolize or attempt to monopolize the
9 above-described relevant market has been done with the intent to specifically eliminate plaintiff
10 DAWGS as a viable competitor and threat to CROCS' EVA clog-type footwear monopoly, and to
11 suppress competition in general. CROCS' overall exclusionary scheme to monopolize the market
12 consists of at least the following anticompetitive acts/conduct to be viewed as a whole:

- 13 (a) fraudulently obtaining patents with the intent to monopolize;
- 14 (b) engaging in patent misuse by asserting patent rights far beyond the narrow
15 scope of the patent grant with the intent to create a monopoly;
- 16 (c) initiating sham and baseless litigation predicated on these patents obtained
17 through fraud or inequitable conduct;
- 18 (d) seeking and obtaining a General Exclusion Order from the ITC based on
19 invalid and unenforceable patents;
- 20 (e) continuing and increasing baseless litigation after being presented with
21 information demonstrating the invalidity of its patents; and
- 22 (f) initiating sham litigation against the largest customers of DAWGS based on
23 these invalid and unenforceable patents.

24 51. Conduct is anticompetitive when it improperly excludes or handicaps competitors
25 in order to gain or maintain a monopoly. Anticompetitive or exclusionary practices are acts
26 designed to deter potential rivals from entering the market, intervening or preventing access to
27 customers, or preventing existing rivals from increasing their output. Anticompetitive acts are not
28 fair competition on the merits of price, quality or other factors, but instead acts that have the effect



1 of preventing or excluding competition or frustrating the efforts of other companies to compete for
2 customers within the relevant market. Conduct by a monopolist that constitutes a deliberate effort
3 to discourage and thwart customers from doing business with its rivals is anticompetitive.

4 52. Defendant CROCS' anticompetitive and exclusionary conduct described herein is
5 not motivated or driven by technological or efficiency concerns, and has no valid or legitimate
6 business justification. Rather, its clear purpose and effect is solely to ensure that plaintiff DAWGS
7 and other competitive rivals in the relevant market cannot successfully invade or erode defendant
8 CROCS' dominant and entrenched market position.

9 53. During the relevant time period, defendant CROCS and plaintiff DAWGS have
10 both designed, manufactured, marketed, and sold EVA fully molded ventilated clog-type casual
11 footwear products in the United States. The marketing, distribution and sale of such products
12 directly involves, and substantially affects, interstate commerce. The violations of the Sherman
13 and Clayton Acts alleged herein adversely, directly, and substantially impact the flow of such
14 products in interstate commerce.

15 54. As alleged herein, defendant CROCS has engaged in an anticompetitive and
16 exclusionary scheme to prevent plaintiff DAWGS and other competitors from manufacturing and
17 selling competing EVA clog-type footwear products, all for the purpose of maintaining and
18 increasing CROCS' controlling market share and improperly sustaining supracompetitive pricing
19 on its EVA fully molded ventilated clog-type casual footwear products.

20 55. CROCS' conduct has produced antitrust injury, and unless enjoined by this Court,
21 will continue to produce at least the following anticompetitive, exclusionary and injurious effects
22 upon competition in interstate commerce:

23 (a) competition in the design, development, distribution, and sale of EVA fully
24 ventilated clog-type footwear products has been substantially and unreasonably restricted,
25 lessened, foreclosed, and eliminated;

26 (b) barriers to entry into the relevant market have been raised;

27 (c) consumer choice has been, and will continue to be, significantly limited and
28 constrained as to selection, price and quality of EVA clog-type footwear products;

1 (d) consumer access to DAWGS' competitive EVA clog-type footwear
2 products will be artificially restricted and reduced, and DAWGS' products will continue to be
3 excluded from the market;

4 (e) the market for development, distribution, and sale of EVA clog-type
5 footwear products will continue to be artificially restrained or monopolized; and

6 (f) CROCS will continue to charge supracompetitive prices for these products
7 to the detriment of consumers.

8 56. Defendant CROCS' exclusionary conduct has caused antitrust injury to plaintiff
9 DAWGS, the industry, and to consumers. Antitrust injury based upon a bad-faith patent
10 prosecution claim and impermissibly broad assertion of a patent grant is satisfied by (1) loss of
11 customers and (2) costs incurred in defense of the prior patent infringement suit and subsequent
12 costs because such losses and costs are injuries which flow from the antitrust wrong.

13 57. By reason of, and as a direct and proximate result of, defendant CROCS'
14 anticompetitive and exclusionary practices and conduct, plaintiff DAWGS has suffered, and will
15 continue to suffer, financial injury to its business and property. As a result, DAWGS has been
16 deprived of revenue and profits it would have otherwise made, suffered diminished market
17 growth, and sustained a loss of goodwill. Plaintiff DAWGS has not yet calculated the precise
18 extent of its past damages and cannot now estimate with precision the future damages that
19 continue to accrue, but when it does so, it will seek leave of the Court to insert the amount of the
20 damages sustained herein.

21 **SECOND CLAIM FOR RELIEF**

22 **(Attempted Monopolization in Violation of**

23 **Section 2 of the Sherman Act (15 U.S.C. § 2))**

24 58. Plaintiff DAWGS hereby realleges and incorporates by reference each allegation
25 set forth in Paragraphs 1 through 57 of this Complaint, as if set forth in full herein.

26 59. Section 2 of the Sherman Act (15 U.S.C. § 2) prohibits, *inter alia*, attempts to
27 monopolize any part of the trade or commerce among the States.

28



1 60. The relevant product market (or submarket) for antitrust purposes in this case is
2 defined as EVA fully molded ventilated clog-type casual footwear products. There are no
3 reasonable substitutes for EVA clog-type footwear and consumers do not consider these clogs to
4 be reasonably interchangeable with other types of footwear. The cross-elasticity of demand
5 between EVA fully molded ventilated clog footwear and other types of footwear is extremely low.
6 The relevant geographic market for antitrust purposes is the United States.

7 61. CROCS dominates the relevant market, possessing a market share greater than
8 90%.

9 62. Defendant CROCS' conduct and practices are anticompetitive and exclusionary.
10 Defendant CROCS' overall unlawful scheme is described in paragraphs 25-28, 47, 50, and 55-56
11 above.

12 63. Plaintiff DAWGS has the requisite standing to assert antitrust claims against
13 defendant CROCS because it is a participant and competitor in the relevant market and has
14 suffered damages as a direct result of CROCS' actions.

15 64. Absent action by this Court to enjoin and preclude defendant CROCS from
16 continuing its anticompetitive and exclusionary conduct, there is a dangerous probability that
17 CROCS will succeed in obtaining a monopoly in the relevant market for EVA fully molded clog-
18 type footwear products (or continue to monopolize), including the power to set prices, reduce
19 output, or exclude competition in the market.

20 65. Defendant CROCS has undertaken its clearly anticompetitive and exclusionary
21 conduct with the purpose of monopolizing, and with the deliberate and specific intent to
22 monopolize the market for EVA clog-type footwear products in the United States. Defendant
23 CROCS specifically intends to eliminate, destroy or foreclose meaningful competition in the
24 relevant market through the tactics described above. CROCS' conduct discourages and/or
25 precludes buyers/distributors of EVA clog-type footwear products from dealing with or buying
26 from competing manufacturers, such as plaintiff DAWGS. CROCS' scheme is designed to
27 exclude and thwart competition while allowing it to charge supracompetitive prices for its EVA
28 clog-type footwear products.



66. As described in Paragraph 42, significant and high barriers to market entry exist that preclude or discourage new manufacturers from entering the relevant market. Significant barriers to expansion also exist, which is evidenced by the fact that only a small number of competitors have managed to marginally penetrate this market, many have exited the market, and none have managed to capture more than a nominal market share.

67. Defendant CROCS' anticompetitive acts affect a substantial amount of interstate commerce in the relevant market and constitute attempted monopolization in violation of Section 2 of the Sherman Act. Defendant CROCS' conduct is not motivated by technological or efficiency concerns and has no valid or legitimate business justification. Instead, its purpose and effect is to preserve and promote its monopoly position and market stranglehold, to the detriment of consumer welfare, plaintiff DAWGS, and to CROCS' other competitive rivals in the relevant market.

68. Defendant CROCS' anticompetitive acts have caused substantial economic injury to plaintiff DAWGS and have also injured competition in the relevant market by, *inter alia*, foreclosing, lessening, and eliminating competition and depriving buyers/distributors from securing lower-cost or higher-quality alternatives for EVA fully molded ventilated clog-type footwear products.

69. As described in Paragraph 55, CROCS' conduct has produced antitrust injury, and unless enjoined by this Court, will continue to produce anticompetitive, exclusionary, and injurious effects upon competition in interstate commerce.

70. Defendant CROCS' exclusionary conduct has caused antitrust injury to plaintiff DAWGS, the industry, and consumers. Antitrust injury based upon a bad-faith patent prosecution claim and bad-faith assertion of the impermissibly broadened scope of a patent grant is satisfied by (1) loss of customers and (2) costs incurred in defense of the prior patent infringement suit and subsequent defensive efforts because such losses and costs are injuries which flow from the antitrust wrong.

71. By reason of, and as a direct and proximate result of, defendant CROCS' practices and conduct, plaintiff DAWGS has suffered and will continue to suffer financial injury to its

1 business and property. As a result, DAWGS has been deprived of revenue and profits it would
 2 have otherwise made, has suffered diminished market growth, and has sustained a loss of
 3 goodwill. Plaintiff DAWGS has not yet calculated the precise extent of its past damages and
 4 cannot now estimate with precision the future damages that continue to accrue, but when it does
 5 so, it will seek leave of the Court to insert the amount of the damages sustained herein.

6 **THIRD CLAIM FOR RELIEF**

7 **(Unlawful Exclusionary Arrangements in Violation of** 8 **Section 3 of the Clayton Act (15 U.S.C. § 14))**

9 72. Plaintiff DAWGS hereby alleges and incorporates by reference each allegation set
 10 forth in Paragraphs 1 through 71 of this Complaint, as if set forth in full herein.

11 73. Section 3 of the Clayton Act (15 U.S.C. § 14), makes it unlawful, *inter alia*, “[f]or
 12 any person . . . to lease or make a sale or contract for sale of goods . . . on the condition,
 13 agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the goods
 14 . . . of a competitor . . . of the lessor or seller, where the effect . . . may be to substantially lessen
 15 competition or tend to create a monopoly” in the relevant market. Under Section 3, the
 16 conditioning of the offer, allowance, or payment of rebates or discounts to preclude or exclude the
 17 use of a competitors’ products is also unlawful. *Id.* Arrangements and contracts whose probable
 18 effect is to foreclose competition in a substantial share or segment of the line of commerce
 19 affected violate Section 3.

20 74. The relevant product market (or submarket) for antitrust purposes in this case is
 21 defined as EVA fully molded ventilated clog-type casual footwear products. The relevant
 22 geographic market for antitrust purposes is the United States.

23 75. CROCS dominates the market for EVA clog-type footwear products in the United
 24 States, possessing a market share greater than 90%.

25 76. As described in Paragraph 42, there are significant and high barriers to the relevant
 26 market entry that prevent other manufacturers from meaningfully entering or expanding in the
 27 relevant market.



1 77. Plaintiff DAWGS has the requisite standing to assert antitrust claims against
2 defendant CROCS because it is a participant and competitor in the relevant market and has
3 suffered damages as a direct result of CROCS' actions.

4 78. CROCS' anticompetitive scheme to substantially lessen competition and create a
5 monopoly in the above-described trade and commerce has been done with the clear intent to
6 specifically eliminate plaintiff DAWGS as a viable competitor and threat to CROCS' EVA fully
7 molded ventilated clog-type casual footwear products business and to suppress competition in
8 general. CROCS' overall anticompetitive scheme consists of at least the following acts, which
9 must be viewed as a whole:

10 (a) successfully threatened, intimidated, and coerced actual and potential
11 purchasers of DAWGS EVA clog-type footwear products not to deal with DAWGS;

12 (b) induced, organized, and implemented a refusal to deal among
13 buyers/distributors, including Academy Sports and others, not to distribute or purchase plaintiff
14 DAWGS' EVA clog-type footwear products; and

15 (c) conditioned the payment or allowance of discounts and rebates provided on
16 the purchase of CROCS footwear products, on an agreement not to deal with or purchase
17 competitive products from DAWGS.

18 79. Exclusive dealing arrangements have the effect of inducing or coercing a buyer to
19 purchase most, or all, products for a period of time from one supplier. The arrangement may take
20 the form of a requirements contract committing the buyer to purchase all (or a substantial portion)
21 of its requirements of a specific product only from one supplier. Such unlawful arrangements also
22 include pricing or rebate policies that create a substantial disincentive to purchase products from
23 competitive sources.

24 80. Exclusionary arrangements do not actually have to prescribe exclusivity to be
25 deemed unlawful under Section 3. Such "de facto" arrangements, understandings, or contracts are
26 anticompetitive if they create or maintain market power resulting in the exclusion of rivals.

27 81. Exclusionary arrangements or contracts can be found illegal, even though the
28 contract or arrangement does not contain specific agreements *not* to use the products of a



competitor, if the practical effect is to prevent such use or purchase. Further, contracts or arrangements utilized by a monopolist that provide price discounts or rebates to induce a buyer to purchase most, or all, of their product needs, but do not require absolute exclusivity, are also unlawful de facto exclusive dealing arrangements. Such arrangements were entered into or resulted from the relationship between CROCS and many retailers throughout the United States, including Academy Sports, and others, who informed plaintiff DAWGS that the reason they would not carry DAWGS products is because of agreements with CROCS.

82. Defendant CROCS' anticompetitive and exclusionary conduct described herein is not motivated or driven by technological or efficiency interests and has no valid or legitimate business justification. Rather, its purpose and effect is to ensure that plaintiff DAWGS and other competitive rivals in the relevant market cannot successfully invade or erode defendant CROCS' dominant and entrenched market position.

83. During the relevant time period, defendant CROCS and plaintiff DAWGS have both designed, manufactured, marketed, and sold EVA clog-type footwear products in the United States. The marketing, distribution, and sale of such products directly involves, and substantially affects, interstate commerce. The violations of the Clayton Act alleged herein adversely, directly and substantially affect the flow of such products in interstate commerce.

84. As described in Paragraph 55, CROCS' conduct has produced antitrust injury, and unless enjoined by this Court, will continue to produce anticompetitive, exclusionary and injurious effects upon competition in interstate commerce.

85. Defendant CROCS' practices, described above, have foreclosed competition in a substantial share of the relevant market and/or have substantially suppressed competition or tended to create a monopoly for CROCS in the relevant market.

86. Defendant CROCS' exclusionary agreements, arrangements, or contracts have caused antitrust injury to plaintiff DAWGS, the industry, and to consumers. Conduct that restricts consumer choice and/or makes the market unresponsive to consumer preference harms consumers and results in antitrust injury. When an agreement detrimentally changes the market makeup and



1 limits consumers' choice to one source of output, this causes cognizable antitrust injury of
2 preventing its victims from making free and unhindered choices between market alternatives.

3 87. Defendant CROCS' exclusionary conduct has caused antitrust injury to plaintiff
4 DAWGS, to the industry, and to consumers.

5 88. By reason of, and as a direct and proximate result of, defendant CROCS' practices
6 and conduct, plaintiff DAWGS has suffered, and will continue to suffer, financial injury to its
7 business and property. As a result, DAWGS has been deprived of revenues and profits it would
8 have otherwise made, DAWGS has suffered diminished market growth, and DAWGS has
9 sustained a loss of goodwill. Plaintiff has not yet calculated the precise extent of its past damages
10 and cannot now estimate with precision the future damages that continue to accrue, but when it
11 does so, it will seek leave of the Court to insert the amount of the damages sustained herein.

12 **FOURTH CLAIM FOR RELIEF**

13 **(Intentional Interference Prospective Economic**

14 **Advantage and Actual Contractual Relationships)**

15 89. Plaintiff DAWGS hereby alleges and incorporates by reference each allegation set
16 forth in Paragraphs 1 through 88 of this Complaint, as if set forth in full herein.

17 90. This Court has jurisdiction over this Fourth Claim for Relief based on the doctrine
18 of supplemental jurisdiction (28 U.S.C. § 1367) as this Fourth Claim for Relief arises from the
19 same transactions and from a common nucleus of operative facts as alleged in the first three
20 federal claims for relief.

21 91. Plaintiff DAWGS has existing and valuable business relationships, as well as
22 reasonable expectations of further and future relationships, with buyers/distributors of EVA clog-
23 type footwear products.

24 92. Defendant CROCS was aware of these prospective business and actual contractual
25 relationships and has engaged in intentional and wrongful conduct designed or calculated to
26 disrupt and interfere with those relationships.

27 93. Defendant CROCS' conduct in interfering with such prospective business and
28 actual contractual relations is intentional, malicious and without justification. CROCS' conduct



1 and overall scheme was undertaken solely to hinder, if not eliminate, competition so that CROCS
2 can continue to reap supracompetitive prices and profits on EVA fully molded ventilated clog-type
3 casual footwear products. CROCS' anticompetitive conduct was not privileged or excused and
4 was without any legitimate business justification. CROCS has knowingly engaged in such
5 wrongful conduct for the purpose of excluding competition and to deprive consumers of the
6 benefits of free and fair market competition.

7 94. Defendant CROCS' conduct was a substantial factor in causing financial injury to
8 plaintiff DAWGS and has rendered it more difficult for plaintiff to remain and survive as a viable
9 footwear competitor.

10 95. Plaintiff DAWGS' business and goodwill has been, and will continue to be,
11 substantially injured by CROCS' conduct. Additionally, DAWGS' relationships with actual and
12 prospective customers will continue to be injured and harmed by CROCS' acts and practices.
13 Although plaintiff DAWGS has incurred substantial losses as a proximate result of the foregoing
14 acts, and will continue to incur substantial losses in the future as well as its growth being
15 negatively impacted, all such losses may be difficult to calculate with precision. Therefore, in
16 addition to any recoverable damages proximately caused by CROCS' wrongful conduct, plaintiff
17 DAWGS also seeks a permanent injunction preventing CROCS from continued interference in the
18 future.

19 96. The intentional and disruptive conduct of defendant CROCS is willful, malicious
20 and oppressive. Consequently, an award of exemplary or punitive damages in an amount sufficient
21 to punish and deter CROCS is justified.

22 **FIFTH CLAIM FOR RELIEF**

23 **(Unfair Trade Practices in Violation of the Nevada**

24 **Unfair Trade Practices Act (Nev. Rev. Stat. § 598A))**

25 97. Plaintiff DAWGS hereby alleges and incorporates by reference each allegation set
26 forth in Paragraphs 1 through 96 of this Complaint, as if set forth in full herein.

27 98. This Court has jurisdiction over this Fifth Claim for Relief based on the doctrine of
28 supplemental jurisdiction (28 U.S.C. § 1367) as this Fifth Claim for Relief arises from the same



1 transactions and from a common nucleus of operative facts as alleged in the three federal claims
2 for relief asserted above.

3 99. The Nevada Unfair Trade Practices Act, makes it unlawful, *inter alia*, to commit
4 acts in attempt to or actual engagement in “[m]onopolization of trade or commerce within this
5 State.” Nev. Rev. Stat. § 598A.060(1)(e). Under the provisions of this act, the conditioning of the
6 offer, allowance, or payment of rebates or discounts to preclude or exclude the use of a
7 competitors’ products is also unlawful. *Id.* Arrangements and contracts whose probable effect is to
8 foreclose competition in a substantial share or segment of the line of commerce affected also
9 violate the Nevada Unfair Trade Practices Act.

10 100. The relevant product market (or submarket) in this case is defined as EVA fully
11 molded, ventilated clog-type casual footwear products. The relevant geographic market includes
12 the State of Nevada.

13 101. CROCS dominates the market for EVA clog-type footwear products in the United
14 States, including the State of Nevada, possessing an overall market share greater than 90%.

15 102. There are significant and high barriers to the relevant market entry that prevent
16 other manufacturers from meaningfully entering the Nevada market or expanding in the Nevada
17 market.

18 103. Plaintiff DAWGS has the requisite standing to assert Nevada Unfair Trade
19 Practices Act claims against defendant CROCS because it is a participant and competitor in the
20 relevant Nevada market and has incurred damages directly resulting from the acts of CROCS in
21 violation of this act.

22 104. CROCS’ anticompetitive scheme to substantially suppress competition and create a
23 monopoly has been done with the intent to specifically eliminate plaintiff DAWGS as a viable
24 competitor and threat to CROCS’ EVA fully molded ventilated clog-type casual footwear
25 products business, and to reduce competition in general. CROCS’ overall anticompetitive scheme
26 consists of at least the following acts and conduct to be viewed as a whole, being that CROCS has:

27 (a) successfully threatened, intimidated, and coerced actual and potential
28 purchasers of DAWGS EVA clog-type footwear products not to deal with DAWGS;

1 (b) induced, organized, and implemented a refusal to deal among
2 buyers/distributors not to distribute or purchase plaintiff DAWGS' EVA clog-type footwear
3 products; and

4 (c) conditioned the payment or allowance of discounts and rebates provided on
5 the purchase of CROCS footwear products on an agreement not to deal with or purchase
6 competitive products from DAWGS.

7 105. Exclusive dealing arrangements have the effect of inducing or coercing a buyer to
8 purchase most, or all, products for a period of time from one supplier. The arrangement may take
9 the form of a requirements contract committing the buyer to purchase all (or a substantial portion)
10 of its requirements of a specific product only from one supplier. Such unlawful arrangements also
11 include pricing or rebate policies that create a substantial disincentive to purchase products from
12 competitive sources.

13 106. Exclusionary arrangements do not actually have to prescribe exclusivity to be
14 deemed unlawful. Such "de facto" arrangements, understandings, or contracts are anticompetitive
15 if they create or maintain market power resulting in the exclusion of rivals.

16 107. Exclusionary arrangements or contracts can be found illegal even though the
17 contract/arrangement does not contain specific agreements *not* to use the products of a competitor,
18 if the practical effect is to prevent such use or purchase. Further, contracts or arrangements utilized
19 by a monopolist that provide price discounts or rebates to induce a buyer to purchase most, or all,
20 of their product needs, but do not require absolute exclusivity are also unlawful "de facto"
21 exclusive dealing arrangements.

22 108. Defendant CROCS' anticompetitive and exclusionary conduct described herein is
23 not motivated or driven by technological or efficiency interests, and has no valid or legitimate
24 business justification. Rather, its primary purpose and effect is to ensure that plaintiff DAWGS
25 and other competitive rivals in the relevant market cannot successfully invade or erode defendant
26 CROCS' dominant and entrenched market position.

27 109. During the relevant time period, defendant CROCS and plaintiff DAWGS have
28 both marketed and sold EVA clog-type footwear products in Nevada until forced to stop by

1 operation of the fraudulently obtained ITC General Exclusion Order and the anticompetitive and
2 exclusionary conduct of CROCS. The marketing, distribution and sale of such products directly
3 involves, and substantially affects competition and trade within the State of Nevada. The
4 violations of the Nevada Unfair Trade Practices Act alleged herein adversely, directly and
5 substantially affect the flow of such products within Nevada.

6 110. CROCS' conduct has produced significant injury, and unless enjoined by this
7 Court, will continue to produce anticompetitive, exclusionary, and injurious effects upon
8 competition in the State of Nevada.

9 111. Defendant CROCS' practices, described above, have foreclosed competition in a
10 substantial share of the Nevada market and have substantially suppressed competition or tended to
11 create a monopoly for CROCS in the Nevada market.

12 112. Defendant CROCS' exclusionary agreements, arrangements, or contracts have
13 caused injury to plaintiff DAWGS, impacted and eliminated competition, and harmed consumers.
14 Conduct that restricts consumer choice or makes the market unresponsive to consumer preference
15 harms consumers and results in substantial injury clearly constitutes unfair trade practice. When an
16 agreement detrimentally changes the market makeup and limits consumers' choice to one source
17 of output this causes cognizable injury of preventing its victims from making free and unhindered
18 choices between market alternatives.

19 113. Defendant CROCS' exclusionary conduct has caused injury to plaintiff DAWGS,
20 the industry, and to consumers.

21 114. By reason of, and as a direct and proximate result of, defendant CROCS' practices
22 and conduct, plaintiff DAWGS has suffered, and will continue to suffer, financial injury to its
23 business and property in excess of \$75,000, exclusive of interest and costs. DAWGS has been
24 deprived of revenues and profits it would have otherwise made, DAWGS has suffered diminished
25 market growth and DAWGS has sustained a loss of goodwill. Plaintiff has not yet calculated the
26 precise extent of its past damages and cannot now estimate with precision the future damages that
27 continue to accrue, but such damages in excess of \$75,000 as caused by defendant CROCS'
28 violations of the Nevada Unfair Trade Practices Act will be determined at trial.

PRAYER FOR RELIEF

WHEREFORE plaintiff DAWGS prays that this Court adjudge and decree as follows:

1. That the conduct alleged in the First Claim for Relief herein be adjudged to be unlawful monopolization in violation of Section 2 of the Sherman Act (15 U.S.C. § 2);

2. That the conduct alleged in the Second Claim for Relief herein be adjudged to be an unlawful attempt to monopolize in violation of Section 2 of the Sherman Act (15 U.S.C. § 2);

3. That the conduct alleged in the Third Claim for Relief herein be adjudged to be in violation of Section 3 of the Clayton Act (15 U.S.C. § 14);

4. That the conduct alleged in the Fourth Claim for Relief herein be adjudged to constitute intentional interference with prospective economic advantage and actual contractual relationships;

5. That the conduct alleged in the Fifth Claim for Relief herein be adjudged to be in violation of the Nevada Unfair Trade Practices Act (Nev. Rev. Stat. § 598A);

6. That, pursuant to Section 4 of the Clayton Act (15 U.S.C. § 15) and the provisions of the Nevada Unfair Trade Practices Act (Nev. Rev. Stat. §598.210(2)), plaintiff recover treble the actual amount of its damages sustained by reason of those federal antitrust and Nevada unfair trade practice violations;

7. That, pursuant to Section 4 of the Clayton Act (15 U.S.C. § 15) and the provisions of the Nevada Trade Practices Act (Nev. Rev. Stat. §598.210), plaintiff be awarded a reasonable attorneys' fee and costs of litigation;

8. That, pursuant to Section 16 of the Clayton Act (15 U.S.C. § 26) and the provisions of the Nevada Trade Practices Act (Nev. Rev. Stat. §598.210(1)), the anticompetitive, and exclusionary conduct of defendant CROCS be permanently enjoined;

9. That plaintiff DAWGS be awarded punitive or exemplary damages on its tort claim; and

10. For such other and further relief as the Court deems just and proper.

1 Dated: September 10, 2014

2 By: /s/ Brian J. Elliott

3 Brian J. Elliott (Nevada Bar No. 11115)

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14 60385.3

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DEMAND FOR JURY TRIAL

WHEREFORE plaintiff DAWGS prays that this Court adjudges and decrees and follows:

Plaintiff hereby demands trial by jury pursuant to Rule 38(b) of the Federal Rules of Civil Procedure and Local Rule 38-1.

Dated: September 10, 2014

By: /s/ Brian J. Elliott

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