

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
**Judge Philip A. Brimmer**

Civil Action No. 06-cv-00605-PAB-KMT  
(Consolidated with Civil Action No. 16-cv-02004-PAB-KMT)

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Civil Action No. 06-cv-00605-PAB-KMT

CROCS, INC.,

Plaintiff,

v.

EFFERVESCENT, INC.,  
HOLEY SOLES HOLDINGS, LTD.,  
DOUBLE DIAMOND DISTRIBUTION, LTD., and  
U.S.A. DAWGS, INC.,

Defendants.

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Civil Action No. 16-cv-02004-PAB-KMT

U.S.A. DAWGS, INC. and  
DOUBLE DIAMOND DISTRIBUTION, LTD.,

Plaintiffs,

v.

RONALD SNYDER,  
DANIEL HART,  
THOMAS J. SMACH,  
ANDREW REES,  
GREGG RIBATT,  
ANDREW REDDYHOFF,  
GEORGE B. BOEDECKER, JR.,  
LYNDON HANSON,  
DONALD LOCOCO,  
RAYMOND CROGHAN,  
RONALD FRASCH,  
MICHAEL MARGOLIS,  
JEFFREY LASHER,  
MICHAEL E. MARKS,  
PRAKASH MELWANI,

JOHN P. MCCARVEL,  
ERIK REBICH,  
SARA HOVERSTOCK, and  
JOHN AND JANE DOE DEFENDANTS 1-30,

Defendants.

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**ORDER**

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This matter is before the Court on Plaintiff Crocs, Inc.'s Request to File Short Surreply in Support of Crocs's Responsive Claim Construction Brief [Docket No. 413].

On November 22, 2016, Defendants U.S.A. Dawgs, Inc. and Double Diamond Distribution, Ltd. (collectively "Dawgs") filed their opening claim construction brief. Docket No. 312. On December 13, 2016, Crocs, Inc. ("Crocs") filed its responsive claim construction brief. Docket No. 343. On January 9, 2017, Dawgs filed its reply brief. Docket No. 401. Crocs requests leave to file a short surreply. Docket No. 413.

Crocs argues that a surreply is necessary because Dawgs' reply brief cites to previously undisclosed evidence. *Id.* Crocs first complains about Dawgs' citation to the "Decision of the Third Board of Appeal of 26 March 2010" of the European Union Intellectual Property Office, a copy of which is attached as Exhibit B to its reply. Docket Nos. 413-3 at 2; 401 at 10. Crocs argues that Dawgs did not disclose this authority in the parties' joint claim construction statement or discuss it in its opening brief. Docket No. 413 at 1. The citation to the decision of the Third Board of Appeal is a citation to legal authority in response to an argument raised by Crocs. See Docket No. 401 at 10. Dawgs does not claim that the decision has any binding effect on Crocs. *Id.* The Court

finds that Dawgs' citation to this decision does not justify the submission of a surreply.

Crocs further objects to Dawgs' "material misrepresentations" regarding "new evidence." Docket No. 413 at 1. Apparently Crocs is referring to Dawgs' discussion of the testimony of Crocs' expert, Ian Whatley. See Docket No. 413-3 at 4-6. Crocs fails to describe how references to the deposition of Crocs' expert constitutes improper new evidence<sup>1</sup> or would provide justification for leave to file a surreply. Accordingly it is

**ORDERED** that Plaintiff Crocs, Inc.'s Request to File Short Surreply in Support of Crocs's Responsive Claim Construction Brief [Docket No. 413] is denied.

DATED February 14, 2017.

BY THE COURT:

s/Philip A. Brimmer  
PHILIP A. BRIMMER  
United States District Judge

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<sup>1</sup>Dawgs' unopposed motion for an extension of time to file its reply claim construction brief requested more time specifically in order to depose Crocs' expert. Docket No. 357. The magistrate judge granted that request. Docket No. 361.