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Crocs Versus Dawgs: The Federal Circuit Holds That Falsely Stating a Product is “Patented” Can Lead to A False Advertising Claim

Intellectual Property & Technology Law Journal

December 30, 2024

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In *Crocs, Inc. v. Effervescent, Inc. et al.*, the U.S. Court of Appeals for the Federal Circuit recently held that a false advertising cause of action arises where a party falsely claims that it holds a patent on a product feature and advertises the feature in a manner that causes consumers to be misled about the nature, characteristics, or qualities of the product. The Federal Circuit decision has provided a new avenue for false patent marking claims under the Lanham Act that has different requirements and awards of damages than a false marking claim under the Patent Act.

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