

CROCS, INC. v. EFFERVESCENT, INC., Appeal No. 2022-2160 (Fed. Cir. October 3, 2024).  
Before Reyna, Cunningham, and Albright. Appealed from D. Colo. (Judge Brimmer).

Background:

Crocs sued Dawgs for patent infringement. Dawgs counterclaimed, alleging Crocs violated Section 43(a) of the Lanham Act through false advertising by stating that its product includes patented "Croselite" material. Dawgs alleged these statements misled consumers about the "nature and characteristics" of Crocs' products under Section 43(a)(1)(B). Crocs moved for summary judgment, arguing Dawgs' counterclaim failed as a matter of law. The District Court granted summary judgment in Crocs' favor. Dawgs appealed.

Issue/Holding:

Did the district court err in granting summary judgment against Dawgs' Lanham Act counterclaim? Yes, reversed and remanded.

Discussion:

The Federal Circuit held that a cause of action arises under Section 43(a)(1)(B) where a party falsely claims to possess a patent on a product feature and advertises that feature in a way that misleads consumers about the nature, characteristics, or qualities of its product. The Federal Circuit found the district court erred in concluding that previous Supreme Court and Federal Circuit decisions in *Dastar* and *Baden* precluded Dawgs' Lanham Act counterclaim.

*Dastar* held that a different section's (Section 43(a)(1)(A)) protection against false designation of "origin" refers to the producer of tangible goods, not the author of ideas embodied in those goods. The Federal Circuit distinguished this case because Dawgs' allegations went beyond mere claims of origin, linking Crocs' false patent statements to specific, tangible qualities of its Croselite material, *i.e.*, that it is patented.

In *Baden*, the Federal Circuit held that claims based solely on false designation of authorship are not actionable under Section 43(a)(1)(B), as authorship is not a "nature, characteristic, or quality" of goods. The Federal Circuit distinguished the present case from *Baden* because Dawgs' allegations connected Crocs' false patent claims to statements about the physical properties and superiority of its products, not just innovation or authorship.

The Federal Circuit emphasized that while *Dastar* precludes Lanham Act claims based solely on false claims of origin, Dawgs' allegations did not stand alone. Rather, Dawgs alleged Crocs used false patent claims to ascribe specific characteristics to its Croselite material, causing consumers to believe Crocs' footwear was made of superior or unique material compared to competitors (including Dawgs).

The Federal Circuit clarified that claims that a product contains "patented" material are not solely expressions of innovation and authorship when linked to statements about tangible product qualities. Because Dawgs presented a viable theory under Section 43(a)(1)(B) connecting Crocs' alleged misrepresentations to its shoes' nature and qualities, the district court erred in granting summary judgment. The Federal Circuit reversed and remanded for further proceedings.