

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

CASE NO. 3:08-CV-349

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ALISON COX PREGLIASCO, mother and natural
guardian of A.P., an infant, and ALISON
COX PREGLIASCO, Individually,

Plaintiffs,

-against-

CROCS, INC.,
A Colorado Corporation

Defendant.

AMENDED COMPLAINT

Plaintiff Demands
Trial by Jury

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Plaintiffs, ALISON COX PREGLIASCO, mother and natural guardian of A.P., an infant,
and ALSION COX PREGLIASCO, Individually, by their attorneys, WATERS LAW GROUP,
PLLC and ROBINSON & YABLON, P.C., complaining of the defendant, sets forth as follows:

1. This is an action pursuant to Kentucky products liability law. Jurisdiction of the
Court is predicated upon diversity of citizenship pursuant to 28 U.S.C. §1332 (a) (1) because the
dispute involves the plaintiffs, who are citizens of Kentucky, and defendant, a Colorado
corporation, and because the amount in controversy is greater than \$100,000.00.

FIRST CAUSE OF ACTION

PRODUCT LIABILITY

2. At all times hereinafter mentioned, Plaintiff A.P., an infant under the age of fourteen, and her mother and natural guardian, ALISON COX PREGLIASCO, were residents of Kentucky, residing in the City of Louisville. At all times hereinafter mentioned, defendant, CROCS, INC. ("CROCS") was and still is a foreign corporation transacting business in the state of New York.

3. At all times hereinafter mentioned, CROCS was and is a foreign corporation, duly authorized to do business in the state of Kentucky.

4. At all times hereinafter mentioned, CROCS was a Colorado corporation.

5. At all times hereinafter mentioned, CROCS had its principal place of business in Niwot, Colorado.

6. At all times hereinafter mentioned, CROCS contracted to supply goods in the state of Kentucky.

7. At all times hereinafter mentioned, CROCS regularly did and solicited business and/or engaged in other persistent courses of conduct and/or derived financial revenue from the goods supplied in the state of Kentucky.

8. At all times hereinafter mentioned, CROCS expected, or reasonably should have expected acts done by it to have consequences in the state of Kentucky.

9. At all times hereinafter mentioned, CROCS was engaged in the business of manufacturing, selling and/or distributing footwear, and, in particular, colored footwear comprised of closed-cell resin.

10. In or about 2002, CROCS began to manufacture, sell and distribute a line of closed-cell resin footwear.

11. In or about 2002, CROCS promoted, advertised and marketed its footwear as a slip-resistant outdoor shoe for boating and other outdoor use.

12. In or about 2005, CROCS did commence promotion, marketing and advertising its footwear as an all-purpose shoe for children in small sizes for children.

13. In furtherance of the promotion, marketing, and advertising geared toward the child marketplace, CROCS did commence the selling of footwear in small sizes for children, in child-friendly colors, made use of Disney characters, and promotion of Jibbitz, all in an effort to generate revenue from the sale of CROCS to parents of small children.

14. CROCS did engage in this course of promotion, marketing and sales, directly and through its distributors in the state of Kentucky.

15. In 2005, CROCS did become aware of reports of children being injured while wearing CROCS' shoes when said shoes were sucked into moving escalators.

16. In 2005, the issue of CROCS' shoes being sucked into escalators causing injuries to children was featured on ABC's Good Morning America.

17. In 2005, in response to reports of CROCS' shoes being sucked into escalators causing injuries to children, CROCS did issue statements to media that its shoes were safe and that the reported escalator incidents were the fault not of CROCS but rather the parents of the injured children and/or those responsible for maintenance and repair of escalators. CROCS further stated that it was looking into the happening of such incidents and that it was concerned about escalator safety.

18. The statements issued by CROCS and its employees and/or agents, as referenced in ¶17, *supra*, were patently false.

19. CROCS recklessly and knowingly issued the aforementioned false statements in an effort to deflect blame and so as to maximize its corporate profits.

20. In 2006, CROCS did become aware of multiple further reports of children being injured while wearing CROCS' shoes when said shoes were sucked into moving escalators.

21. In 2006, in response to reports of CROCS' shoes being sucked into escalators causing injuries to children, CROCS did issue statements to media that its shoes were safe and that the reported escalator incidents were the fault not of CROCS but rather the parents of the injured children and/or those responsible for maintenance and repair of escalators. CROCS further stated that it was looking into the happening of such incidents and that it was concerned about escalator safety.

22. The statements issued by CROCS and its employees and/or agents, as referenced in ¶21, *supra*, were patently false.

23. CROCS knowingly issued the aforementioned false statements in an effort to deflect blame and so as to maximize its corporate profits.

24. On or about March 21, 2008, Plaintiff, ALISON COX PREGLIASCO did purchase a pair of children's CROCS for her daughter, the infant plaintiff, in the state of Kentucky.

25. At the time of the manufacture, distribution, and sale of said pair of CROCS footwear, the footwear contained no safety design features, safety guards and/or warnings of any kind.

26. At the time of the manufacture, distribution and sale of said pair of CROCS, defendant knew, or had reason to know that, despite its promotion, marketing and advertising, CROCS were not suitable and were unsafe as "all purpose shoes for comfort and fashion."

27. At the time of the manufacture, distribution and sale of said pair of CROCS, defendant knew, or had reason to know, of multiple prior reported incidents where young children wearing CROCS were injured when their CROCS were caught in escalators. Defendant further knew that said prior reported incidents all involved claims of similar serious foot injuries to young children.

28. On or about June 4, 2008, infant plaintiff A.P., while wearing CROCS, was severely and permanently injured when one of her CROC shoes was caught in an escalator at Hartsfield Airport in Atlanta, Georgia, causing her right foot to be seriously injured as depicted in the two (2) color photographs annexed as Exhibit "1".

29. The aforesaid occurrence and the injuries resulting therefrom and suffered by the plaintiffs were caused solely by reason of the recklessness, negligence and carelessness of the defendant in its design, manufacturing, testing, inspection, production, assembly, distribution, and sale of its CROCS footwear including the aforesaid pair of CROCS footwear worn by infant plaintiff.

30. By reason of the foregoing, plaintiffs have been damaged and are entitled to compensatory damages in the amount of ONE MILLION DOLLARS (\$1,000,000.00).

SECOND CAUSE OF ACTION
BREACH OF EXPRESS & IMPLIED WARRANTY

31. Plaintiffs, repeat, restate and reallege each and every allegation contained in paragraphs "1" through "30" with the same force and effect as if fully set forth herein.

32. CROCS in connection with its business activities aforementioned herein, made both express and implied warranties with regard to the aforesaid product; warranting that it was fit, safe, capable and suitable for the use and purpose intended, and that it was not unsafe or defective.

33. The aforesaid warranties and representations were false, misleading and inaccurate in that the aforesaid CROCS footwear was unsafe, dangerous and defective.

34. Both express and implied warranties were breached by CROCS.

35. Solely as a result of the aforesaid breaches of warranty, plaintiffs suffered severe injuries and damages while using CROCS footwear for their warranted use and purpose.

36. By reason of the foregoing, plaintiffs have been damaged in a sum in the amount of ONE MILLION DOLLARS (\$1,000,000.00).

THIRD CAUSE OF ACTION

FAILURE TO WARN OF KNOWN DEFECT

37. Plaintiffs, repeat, restate and reallege each and every allegation contained in paragraphs "1" through "36" with the same force and effect as if fully set forth herein.

38. At all times herein mentioned, defendant CROCS was aware of problems with regard to the safety and suitability of its footwear as manufactured, sold and marketed.

39. Defendant, notwithstanding said knowledge, failed to design its footwear with adequate safety features and failed to notify and warn purchasers and users of its dangerous product, including plaintiffs herein.

40. As a result of said failure to warn, CROCS is liable to plaintiffs for the injuries and damages they suffered.

41. By reason of the foregoing, plaintiffs have been damaged in the sum of ONE MILLION DOLLARS (\$1,000,000.00).

FOURTH CAUSE OF ACTION

LOSS OF SERVICES

42. Plaintiffs, repeat, restate and reallege each and every allegation contained in paragraphs "1" through "41" with the same force and effect as if fully set forth herein.

43. That the Plaintiff, ALISON COX PREGLIASCO, individually, is the mother and natural guardian of the infant-plaintiff, A.P.

44. That by reason of the foregoing incident, Plaintiff, ALSION COX PREGLIASCO was caused to sustain pecuniary losses due to the injuries suffered by her daughter, infant plaintiff, A.P.

45. That by reason of the foregoing incident, Plaintiff, ALSION COX PREGLIASCO was deprived her daughter's services stemming from the serious nature and severity of infant plaintiff, A.P.'s injuries, incurred substantial expenses and was forced to provide services on her behalf.

46. By reason of the foregoing, plaintiffs have been damaged in the sum of ONE MILLION DOLLARS (\$1,000,000.00).

FIFTH CAUSE OF ACTION

PUNITIVE DAMAGES

47. Plaintiffs, repeat, restate and reallege each and every allegation contained in paragraphs "1" through "46" with the same force and effect as if fully set forth herein.

48. The acts and omissions of CROCS, demonstrate a reckless and willful pattern of wanton and depraved indifference to the likelihood of harm to children as a result of product defects in CROCS' footwear.

49. At every crucial juncture, when the onus was upon CROCS to modify its footwear and its marketing so as to warn consumers of dangers known to CROCS, CROCS instead recklessly and knowingly made misleading statement in an effort to maximize its corporate profits at the expense of injuries to young and innocent children.

50. When confronted with incident upon incident of children being injured due to product defects in its footwear, rather than act to protect children and inform their parents and consumers of known dangers, CROCS, instead issued false statements, baselessly attempting to blame persons and entities who were wholly free from fault.

51. The acts and omissions of CROCS, as detailed, *supra*, demonstrate a high degree of moral turpitude warranting the imposition of punitive and/or exemplary damages in the amount of ONE MILLION DOLLARS (\$1,000,000.00)

WHEREFORE, Plaintiffs, ALISON COX PREGLIASCO, mother and natural guardian of A.P., an infant and ALISON COX PREGLIASCO, individually demand judgment against the defendant along with such other and further relief as may be granted by the Court, including but not limited to the costs and disbursements of this action.

Dated: July 1, 2008

Respectfully submitted,

s/ Benjamin S. Shively
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- and -

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CERTIFICATE OF SERVICE

I hereby declare that on this 1st day of July, 2008, I electronically filed a true and accurate copy of the foregoing document through the ECF system, which will send a notice of electronic filing to Andrew Laskin of Robinson & Yablon, P.C., and on this 1st day of July, 2008, I mailed a true and accurate copy of the foregoing document, postage prepaid, via United States Certified Mail, return receipt requested, to the following:

CROCS, INC.
6328 Monarch Park Place
Niwot, CO 80503

Certified Mail #: 7004 2890 0001 7826 8480

(Principal Office / Street Address for Defendant)

- and -

The Corporation Company
1675 Broadway, Suite 1200
Denver, CO 80202

Certified Mail #: 7004 2890 0001 7826 8473

(Registered Agent for Defendant)

s/ Benjamin S. Shively, Esq