

## Patented, Proprietary, or Problematic? Supreme Court Declines to Resolve Circuit Split on Lanham Act False Advertising Claims

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On October 6, 2025, the U.S. Supreme Court declined to review the Federal Circuit's decision in *Crocs, Inc. v. Double Diamond Distrib., Ltd., et al.*, leaving a circuit split regarding Lanham Act false advertising claims firmly in place. The Second, Sixth, and Ninth Circuits have held that the Lanham Act's false advertising cause of action does not extend to statements concerning the intangible features of a product, like whether it is patented or proprietary. But the Fourth and Federal Circuits have held the opposite. Without guidance from the Supreme Court, companies face potential liability for advertising claims that will depend on the forum of the lawsuit.

### The Underlying Case

This issue in *Crocs* stemmed from a protracted legal battle initiated in 2006 against Double Diamond Distribution, Ltd., U.S.A. Dawgs, Inc., and Mojave Desert Holdings, LLC (collectively, Dawgs). A decade later in 2016, Dawgs alleged that Crocs violated the Lanham Act by falsely claiming that its closed-cell resin "Croslite" was exclusive, proprietary, and patented. Dawgs alleged that the statement was likely to deceive consumers into believing that all other molded footwear is made of inferior material. The U.S. District Court for the District of Colorado found these statements not actionable under the Lanham Act following the precedent set by the Second, Sixth, and Ninth Circuits.

But the Federal Circuit reversed the lower court decision, holding that the prohibition on misrepresentations about "the nature, characteristics, qualities, or geographic origin" of a product extends to intangible properties.<sup>[1]</sup> In doing so, the Federal Circuit agreed with Dawgs' assertion that "a cause of action . . . where a party falsely claims that it possesses a patent on a product feature and advertises that product feature in a manner that causes consumers to be misled about the nature, characteristics, or qualities of its product."<sup>[2]</sup> On October 6, 2025, the Supreme Court declined to review the case, leaving intact the Federal Circuit's ruling that expands the scope of Lanham Act false advertising claims and the split among the circuits. Without Supreme Court intervention, the matter will remain unsettled, and the remaining circuits will have to decide between the two competing views of the law.

### How can companies alleviate risks when advertising?

The overlap between intellectual property laws and advertising rules can make things complicated for businesses trying to promote their products. Each state has its own laws about what you can say in ads, and now, because circuits do not all agree on the standards that apply, a company might be liable for false advertising in one state but not in another. A business could end up facing a lawsuit in a state where your ads reached customers—even without any sales in that state. With online ads and social media, this risk is even higher since a company's advertisements can be seen almost anywhere in the country.

To alleviate risks when advertising, consider the following best practices:

- Exercise caution when describing products as "exclusive" or "proprietary" in marketing materials to avoid overstating intellectual property protections.

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- Consult with in-house or external legal counsel to confirm that all advertising claims are legally supportable and compliant with applicable laws.
- Train marketing and advertising teams on the risks and legal implications of making exaggerated or unsupported intellectual property and product claims.
- Regularly monitor competitors' advertisements for potential violations of federal and state laws, including misleading claims about their own or competing products.

Miller Canfield's Advertising and Marketing Industry Team has extensive experience advising on advertising compliance, intellectual property protection, contract negotiation, and dispute resolution. If you have questions about this article or advertising and marketing compliance generally, please contact your Miller Canfield attorney or the authors of this alert.

[1] *Crocs, Inc. v. Effervescent, Inc.*, 119 F.4th 1, 11 (Fed. Cir. 2024), *cert. denied sub nom. Crocs, Inc. v. Double Diamond Ltd.*, No. 25-75, 2025 WL 2824166 (U.S. Oct. 6, 2025)

[2] *Id.*