UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

Crocs, Inc. v. Effervescent, Inc.; Holey Soles Holdings, Ltd.; Double Diamond Distribution, Ltd.; USA Dawgs, Inc.; Mojave Desert Holdings LLC

Crocs · No. 06-cv-00605-PAB-MDB · Decided May 8, 2026

SUMMARY

The United States District Court for the District of Colorado denies Dawgs' motion to reopen discovery for the limited purpose of producing additional advertising documents and supplementing expert reports. The court applies the Smith factors, concluding that the factors overall do not support reopening discovery, and reinstates the parties' identified Rule 702 motions.

CASE DETAILS

COURT	United States District Court for the District of Colorado
WRITING FOR THE COURT	Philip A. Brimmer
JURISDICTION	United States District Court for the District of Colorado
DECIDED	May 8, 2026
DOCKET	06-cv-00605-PAB-MDB
DISPOSITION	other
PROCEDURAL POSTURE	Order on counterclaim plaintiffs' motion to reopen discovery after remand of a Lanham Act false-advertising claim and on the parties' status reports concerning Rule 702 motions.
STANDARD OF REVIEW	A motion to modify a scheduling order or reopen discovery is committed to the district court's sound discretion. The court applied the six Smith factors: imminence of trial, opposition, prejudice, diligence, foreseeability, and likelihood that discovery will lead to relevant evidence.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Dawgs: Mojave Desert Holdings LLC, Double Diamond Distribution, Ltd., and USA Dawgs, Inc. v. Crocs, Inc.

TOPICS

discovery dispute | civil procedure | expert testimony | trademark law | commercial litigation

PRACTICE AREAS

civil procedure | intellectual property | commercial litigation | evidence

QUESTIONS PRESENTED

1. Whether Dawgs established sufficient grounds under the applicable discovery-reopening factors to reopen discovery for additional advertising documents.
2. Whether Dawgs should be permitted to supplement its marketing and damages expert reports based on the proposed new documents and the passage of time.
3. Whether the parties' previously filed motions to exclude expert testimony under Federal Rule of Evidence 702 should be reinstated after the motion to reopen discovery was denied.

HOLDINGS

1. The motion to reopen discovery was denied because, after weighing the Smith factors, the balance did not support reopening discovery.
2. Because the motion to reopen discovery was denied, there was no new information for the experts to consider, and Dawgs was not permitted to supplement its expert reports on that basis.
3. The court reinstated Crocs's four identified motions to exclude expert opinions and Counterclaim Plaintiffs' motion to exclude certain expert testimony.

KEY QUOTATIONS

> *"Whether to modify a scheduling order "to extend or reopen discovery is committed to the sound discretion" of the court."* (Section II)

> *"Allowing discovery on the basis of continued misconduct would draw courts into a never-ending discovery death spiral."* (Section III.B.4)

FACTUAL BACKGROUND

Dawgs sought to produce 1,237 additional advertising documents and supplement two expert reports concerning Crocs's alleged false advertising of Croslite. Crocs argued that most documents either predated the close of discovery, lacked dates, concerned unrelated brands or information, or raised evidentiary and new-theory concerns. The court found that reopening discovery would impose additional costs and delay, although some post-discovery advertising evidence could bear on damages and laches.

PROCEDURAL HISTORY

Dawgs asserted a Lanham Act counterclaim alleging that Crocs falsely advertised Croslite as proprietary, exclusive, or patented. The district court granted summary judgment for Crocs, and the Federal Circuit reversed the portion of that ruling concerning the claim under 15 U.S.C. § 1125(a)(1)(B), remanding for further proceedings; the Supreme Court later denied certiorari. After the case was reopened, Dawgs moved to reopen discovery to produce additional advertising documents and supplement expert reports. The court denied that motion and reinstated the identified Rule 702 motions.

DISPOSITION

other

CASES CITED

- Crocs, Inc. v. Effervescent, Inc., 119 F.4th 1, 4 (Fed. Cir. 2024)
- Crocs, Inc. v. Double Diamond Distribution, Ltd., 146 S. Ct. 194 (2025)
- Smith v. United States, 834 F.2d 166, 169 (10th Cir. 1987)
- Graves v. Wirta, No. 20-cv-03595-NYW, 2022 WL 1443058, at *6 (D. Colo. May 6, 2022)
- Branch v. United Parcel Serv., No. 18-cv-03358-PAB-KLM, 2021 WL 4820540, at *2 (D. Colo. Oct. 14, 2021)
- AssociationVoice, Inc. v. Athomenet, Inc., No. 10-cv-00109-CMA-MEH, 2011 WL 2297677, at *3 (D. Colo. June 9, 2011)
- Quintana v. Edmond, No. 06-cv-01187-WDM-KLM, 2009 WL 1798219, at *2 (D. Colo. June 23, 2009)
- Sports Rehab Consulting LLC v. Vail Clinic, Inc., No. 19-cv-02075-WJM-SBP, 2025 WL 1144559 (D. Colo. Apr. 18, 2025)
- Carver v. KIA Motors Corp., No. 10-cv-642-JHP-PJC, 2012 WL 90090, at *5 (N.D. Okla. Jan. 11, 2012)
- Valdez v. Motyka, No. 15-cv-0109-WJM-STV, 2019 WL 6838959, at *8 (D. Colo. Dec. 16, 2019)
- Xereas v. Heiss, 2021 WL 4698420, at *1-2 (D.D.C. Sept. 24, 2021)
- Anderson Living Tr. v. WPX Energy Prod., LLC, 308 F.R.D. 410, 440-41 (D.N.M. 2015)