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News

Court of International Trade Issues Opinion on Classification of Cosmetic Sets

On January 3, 2012, the U.S. Court of International Trade issued a decision on the classification of cosmetic sets which could have significant impact on the classification not only of cosmetic sets but potentially on the classification of similar items sold in retail sets. The merchandise in question in the Court's opinion was makeup sets made by Estee Lauder which were sold in a carton containing lipstick, lip pencil, lip gloss, eye pencil, mascara, eye shadow, nail polish, blush, a cosmetic case, a makeup brush case, cosmetics brushes and an applicator. They were being sold as part of an Estee Lauder promotional effort called "Blockbuster" in department stores and customers were able to purchase one if they first purchased a fragrance. Estee Lauder had originally imported the items into the U.S. with the items all being classified separately, with some of them being subject to duty.

Estee Lauder argued that the Blockbuster sets fell under the special tariff rule for "retail sets", which requires that the items in a set be classified under whichever item imparts the "essential character to the set". They further argued that the makeup items, which are duty-free, gave the set its essential character. The government, however, argued that each item in the set should be classified separately as it could not qualify as a set, noting the large size of the cosmetic case. The

government also argued that if the Court did find that the items were a set, then the classification for the cosmetic case (duty-free at 20%), should control as it predominated in weight and bulk.

The Court found that 'Blockbuster' was indeed a set, as the items were intended for the single purpose or activity of putting on makeup, saying that the role of the makeup was essential, contributed more than 50% of the value to the goods, and thus controlled the tariff classification of the entire set. The different types of makeup included in these sets (makeup for eyes, lip, face and nails) are all classified under heading 3304 and are all duty free. The Court then decided which of the makeup subheadings should prevail. The Court held that the eye and lip makeup predominated by number and the eye makeup cost significantly more, therefore, the set should be classified under the subheading for eye makeup. The Court said that the cosmetic case's weight, bulk or size did not overcome the fact that its purpose is to facilitate the storage and use of the items that enable the set to fulfill the activity of applying makeup. The Court also rejected the government's argument that the items could not be a set because the cosmetic case was too large to closely carry all the items in the set, saying there was nothing in the statute requiring the container for the set to be closely fitted.

This case impacts both the classification of cosmetic sets, and, potentially, the classification of sets imported packaged together for retail sale which have been put up for a single purpose with a carrying case. If you have further questions, please contact Barnes Richardson attorneys Alan Goggins at (212) 725-0200 ext. 118, agoggins@barnesrichardson.com or Helena Sullivan at (212) 725-0200 ext 119, hsullivan@barnesrichardson.com.

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