

Ottawa, Wednesday, April 18, 1990

**Appeal No. 2820**

IN THE MATTER OF an appeal scheduled to be heard on March 14, 1990, pursuant to section 47 of the *Customs Act*, R.S.C. 1970, c. C-40, as amended;

AND IN THE MATTER OF a decision of the Deputy Minister of National Revenue for Customs and Excise dated June 5, 1987, with respect to a request for a re-determination filed pursuant to subsection 46(3) of the *Customs Act*.

**BETWEEN**

**ORIGINAL NEW YORK SELTZER OF CANADA LIMITED**

**Appellant**

**AND**

**THE DEPUTY MINISTER OF NATIONAL REVENUE  
FOR CUSTOMS AND EXCISE**

**Respondent**

**DECISION OF THE TRIBUNAL**

Neither the appellant nor its representatives appeared at the hearing of the appeal and the Tribunal finds that there is no *prima facie* reason to grant the appeal on the basis of the record. Accordingly, as the appellant failed to discharge the onus of showing that the goods in issue were not properly classified by the respondent, the appeal is dismissed.

Robert J. Bertrand, Q.C.  
Robert J. Bertrand, Q.C.  
Presiding Member

W. Roy Hines  
W. Roy Hines  
Member

Michèle C. Blouin  
Michèle C. Blouin  
Member

Robert J. Martin  
Robert J. Martin  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. 2820**

**ORIGINAL NEW YORK SELTZER OF CANADA LIMITED**      **Appellant**

**and**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**      **Respondent**  
**FOR CUSTOMS AND EXCISE**

*Customs Act - Tariff classification - Whether Black Cherry Flavour should be classified under tariff item 15900-1 as "Spirits ... mixed with any ingredient ... [and] known ... as ... extracts ..." or, as claimed by the appellant, under tariff item 9050-1 as "Vegetable materials for use as flavourings, n.o.p." or tariff item 10664-1 as "Fruit syrups, n.o.p." - Non-appearance at hearing by appellant or its representatives.*

**DECISION:** *Neither the appellant nor its representatives appeared at the hearing of the appeal and the Tribunal finds that there is no prima facie reason to grant the appeal on the basis of the record. Accordingly, as the appellant failed to discharge the onus of showing that the goods in issue were not properly classified by the respondent, the appeal is dismissed.*

*Place of Hearing:*                      *Ottawa, Ontario*

*Date of Hearing:*                      *March 14, 1990*

*Date of Decision:*                      *April 18, 1990*

*Tribunal Members:*                      *Robert J. Bertrand, Q.C., Presiding Member*  
*W. Roy Hines, Member*  
*Michèle C. Blouin, Member*

*Clerk of the Tribunal:*                      *Nicole Pelletier*

## DECISION

This is an appeal pursuant to section 47 of the *Customs Act*<sup>1</sup> from a decision of the Deputy Minister of National Revenue for Customs and Excise dated June 5, 1987, that Black Cherry Flavour should be classified under tariff item 15900-1 as "Spirits ... mixed with any ingredient ... [and] known ... as ... extracts...." The goods in issue were imported from Original New York Seltzer, Santa Fe Springs, California, USA, on entry number P007803 dated April 17, 1986, at Pacific Highway, BC. The appellant claims that the goods should be classified under tariff item 9050-1 as "Vegetable materials for use as flavourings, n.o.p." or under tariff item 10664-1 as "Fruit syrups, n.o.p."

Although the appeal was originally commenced before the Tariff Board, it is taken up and continued by the Tribunal in accordance with subsection 54(2) and section 60 of the *Canadian International Trade Tribunal Act*.<sup>2</sup>

On September 23, 1988, the Tribunal was notified by counsel for the appellant that Clarkson Gordon Inc. had been appointed on August 12, 1988, as Receiver and Manager of the assets, property and undertaking of Original New York Seltzer of Canada Limited, and that the inventory and a significant portion of the assets of the company had been sold.

The Receiver for the appellant was then contacted by telephone on several occasions to inquire whether it wished to proceed with the appeal or have it withdrawn. In the absence of a written confirmation of withdrawal, a hearing of the appeal was scheduled for March 14, 1990, in Ottawa and was duly advertised in the Canada Gazette dated February 17, 1990. The Receiver for the appellant was notified on January 30, 1990, by telephone and in writing, of the hearing date.

On March 13, 1990, the Tribunal was advised by facsimile transmission from the Receiver for the appellant that it would not be attending the hearing of the appeal. On March 14, 1990, the Tribunal convened to hear the appeal. Neither the appellant nor its representatives appeared at the hearing of the appeal.

The Tribunal finds that there is no *prima facie* reason to grant the appeal on the basis of the record. Accordingly, as the appellant failed to discharge the onus of showing that the goods in issue were not properly classified by the respondent, the appeal is not allowed.

Robert J. Bertrand, Q.C.

Robert J. Bertrand, Q.C.

Presiding Member

W. Roy Hines

W. Roy Hines

Member

Michèle C. Blouin

Michèle C. Blouin

Member

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1. R.S.C. 1970, c. C-40, as amended.

2. S.C. 1988, c. 56.