



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

Ottawa, Monday, October 20, 2003

Appeal No. AP-2002-095

IN THE MATTER OF an appeal heard on March 18, 2003, under
section 67 of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF decisions of the Commissioner of
the Canada Customs and Revenue Agency dated July 12 and 15, 2002,
with respect to a request for re-determination under section 60 of
the *Customs Act*.

BETWEEN

CONAIR CONSUMER PRODUCTS INC.

Appellant

AND

**THE COMMISSIONER OF THE CANADA CUSTOMS AND
REVENUE AGENCY**

Respondent

DECISION OF THE TRIBUNAL

The appeal is dismissed.

Zdenek Kvarda
Zdenek Kvarda
Presiding Member

Michel P. Granger
Michel P. Granger
Secretary

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UNOFFICIAL SUMMARY

Appeal No. AP-2002-095

CONAIR CONSUMER PRODUCTS INC.

Appellant

AND

**THE COMMISSIONER OF THE CANADA CUSTOMS AND
REVENUE AGENCY**

Respondent

This is an appeal pursuant to subsection 67(1) of the *Customs Act* from decisions of the Commissioner of the Canada Customs and Revenue Agency (the Commissioner) made under subsection 60(4) of the *Customs Act* dated July 12 and 15, 2002, regarding the classification of goods sold as Straight Styles™ steam straighteners, Shiny Straight™ straighteners and Turn Styles™ crimpers/straighteners imported into Canada during the period from February 16, 1998, to August 11, 2000. The issue in this appeal is whether the goods in issue are properly classified under tariff item No. 8516.32.90 as other electro-thermic hair-dressing apparatus, as determined by the Commissioner, or should be classified under tariff item No. 8516.32.10 as curling irons, as claimed by Conair Consumer Products Inc.

HELD: The appeal is dismissed. The evidence shows that that the goods in issue are different from curling irons in their design and purpose and are advertised in a different category as apparatus used to style hair in many different ways. The Tribunal is of the view, based on Rule 1 of the *General Rules for the Interpretation of the Harmonized System*, that the goods in issue are properly classified under tariff item No. 8516.32.90 as other electro-thermic hair-dressing apparatus.

Place of Hearing: Ottawa, Ontario

Date of Hearing: March 18, 2003

Date of Decision: October 20, 2003

Tribunal Member: Zdenek Kvarda, Presiding Member

Counsel for the Tribunal: Marie-France Dagenais

Clerk of the Tribunal: Margaret Fisher

Appearances: John T. Morin, for the appellant
Elizabeth Richards, for the respondent



Appeal No. AP-2002-095

CONAIR CONSUMER PRODUCTS INC.

Appellant

AND

**THE COMMISSIONER OF THE CANADA CUSTOMS AND
REVENUE AGENCY**

Respondent

TRIBUNAL: ZDENEK KVARDA, Presiding Member

REASONS FOR DECISION

INTRODUCTION

This is an appeal under section 67 of the *Customs Act*¹ from decisions of the Commissioner of the Canada Customs and Revenue Agency (the Commissioner) dated July 12 and 15, 2002, regarding goods imported into Canada during the period from February 16, 1998, to August 11, 2000. The goods in issue are sold as Straight Styles™ steam straighteners, Shiny Straight™ straighteners and Turn Styles™ crimpers/straighteners. The parties agree that the goods in issue are properly classified in subheading No. 8516.32 of the schedule to the *Customs Tariff*² as hair-dressing apparatus. The issue in this appeal is whether the goods in issue are properly classified under tariff item No. 8516.32.90 as other electro-thermic hair-dressing apparatus, as determined by the Commissioner, or should be classified under tariff item No. 8516.32.10 as curling irons, as claimed by Conair Consumer Products Inc. (Conair).

The tariff nomenclature relevant to the issue in this appeal is as follows:

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|---------------|---|
| 85.16 | Electric instantaneous or storage water heaters and immersion heaters; electric space heating apparatus and soil heating apparatus; electro-thermic hair-dressing apparatus (for example, hair dryers, hair curlers, curling tong heaters) and hand dryers; electric smoothing irons; other electro-thermic appliances of a kind used for domestic purposes; electric heating resistors, other than those of heading 85.45. |
| 8516.32 | --Other hair-dressing apparatus |
| 8516.32.10.00 | ---Curling irons |
| 8516.32.90.00 | ---Other |

EVIDENCE

Mr. Paul Sullivan, General Manager, Conair Consumer Products Inc., gave evidence on behalf of Conair. He testified that curling irons are used for two reasons, one, to curl hair and the other, to straighten hair. He further testified that, while straightening irons are used to straighten hair, they also can be used to put a flip or a wave in the hair. He went through some of the documents filed by Conair as exhibits, i.e. marketing

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1. R.S.C. 1985 (2d Supp.), c. 1.
 2. S.C. 1997, c. 36.

specification sheets and price lists for the goods in issue. He testified that the goods in issue are all marketed under the category of curling irons and are shown on the price lists as specialty curling irons.

In describing the goods in issue, Mr. Sullivan explained that they closely resemble curling irons; they are electrically powered, the barrel is heated to provide dry or steam heat, and they are all used to style hair by clamping it between two heated metal surfaces. The goods in issue, like curling irons, are approved under the same CSA International standard. Mr. Sullivan also explained that Conair merchandises products on a shelf by category and that, when the goods in issue are sold to retailers, they are displayed with the curling irons. Finally, referring to a market survey done by an independent company, NPD INTELLECT, Mr. Sullivan testified that the percentage of sales of the goods in issue was listed under the category entitled "Total Curling Irons & Brushes", which also encompasses curling irons.

In cross-examination, Mr. Sullivan acknowledged that Conair's Web site provides separate headings for crimpers, straighteners and curling irons and that straighteners are primarily designed to smooth and straighten hair. He further acknowledged that the CSA standard for curling irons, straighteners and crimpers could apply to a variety of electro-thermic hair-dressing apparatus and that the goods in issue are also displayed in stores with several hair-grooming apparatus, such as hair dryers and hair setters.

In answering questions from the Tribunal, Mr. Sullivan explained that a curling iron has a round barrel and that specialty curling irons have different attachments, such as plates.

Mr. Darren Greek, buyer of electrical personal care products for Zellers, also gave evidence on behalf of Conair. He testified that Zellers' sales information on the goods in issue is collected under the category entitled "curling irons". He explained that straighteners and crimpers, like curling irons fall under this category because of similar functionality, which places them in a family of products within the greater assortment of products for that commodity. He also confirmed that, as a retailer, all these styling irons are displayed together in the store.

In cross-examination, Mr. Greek acknowledged that other hair-dressing apparatus, such as hair dryers, hot curlers, hair trimmers and haircut kits, would all be displayed together as one group of products.

Mr. Gianni Mota, a hairstylist, demonstrated how a steam straightener is used to style hair by either straightening curly hair or curling straight hair. He explained that straighteners are more commonly used nowadays because of the different curls and curl sizes that can be created. He further demonstrated that a curling iron can also be used to straighten hair.

In cross-examination, Mr. Mota testified that there is a key difference between the processes of curling hair with either a straightener or a curling iron. While, with a curling iron, a curl is created by wrapping the hair around a heated rod, with a straightener, a curl is first created with the fingers then heated between the two metal plates.

ARGUMENT

Since both parties agree that the goods in issue are classifiable in subheading No. 8516.32 as other hair-dressing apparatus, Conair submitted that the issue in this appeal is whether the goods in issue fall within the meaning of "curling irons". Conair argued that the evidence indicates that the straighteners and crimpers in issue are used as curling irons to style hair. They are all, according to Conair, marketed as curling irons and are viewed as such by retailers in the marketplace.

Conair further argued that the Tribunal cannot limit its analysis to dictionary definitions of the terms “curling irons” and “curl” and must consider the evidence relating to the general usage and terminology used within the hair-design industry to describe these products. Conair made reference to the Tribunal’s decision in *Gilmour Sports Ltd. v. Deputy M.N.R.C.E.*³ in support of its position. Conair submitted that, since the goods in issue share similar characteristics, manufacturing materials and techniques with curling irons, they should be classified as such under tariff item No. 8516.32.10. According to Conair, the evidence shows that the straighteners and crimpers in issue, like curling irons, use hot metal surfaces to give shape to hair, are made of the same materials and share the same technology to give them utility. Conair further submitted that the evidence indicates that the general usage of these products is to style hair (either to curl, straighten or flip) and that the terminology applied to straighteners in the trade, both at the manufacturing and retail levels, is “curling irons”.

Finally, Conair argued that regard should be given to Rule 4 of the *General Rules for the Interpretation of the Harmonized System*,⁴ which provides that, when goods cannot be classified in accordance with Rules 1 to 3, they shall be classified in the heading appropriate to the goods to which they are most akin. Conair submitted that the goods in issue are most akin to curling irons and, as such, should be classified under tariff item No. 8516.32.10.

The Commissioner agreed that the goods in issue are classifiable in subheading No. 8516.32. The Commissioner submitted that there are no explanatory notes to assist the Tribunal in determining the classification of the goods in issue. According to the Commissioner, regard must be given to Rule 1 of the *Canadian Rules*,⁵ which provides that the classification of goods must be determined according to the terms of the tariff item. The Commissioner submitted that the terms of the tariff item must be given some meaning and that, in this instance, reference must be made to dictionary definitions in order to understand the common ordinary usage of the terms.

The Commissioner suggested that the basic meaning of “curling iron”, as found in *Merriam-Webster’s Collegiate Dictionary*, is “a rod-shaped [usually] metal instrument which is heated and around which a lock of hair to be curled or waved is wound”.⁶ The Commissioner submitted that there is only one definition under the term “curling iron”, which bears out the ordinary meaning of the word understood by the public, that is, an instrument used to curl hair. The Commissioner argued that the evidence shows that the goods in issue are not considered curling irons by the public and are not advertised as curling irons by Conair, since they are shown on its Web site in a different category. He further argued that the goods in issue, with their metal plates, are designed to straighten or to remove curl from the hair but not to curl hair as with curling irons that are specifically used by winding hair around the metal rod. Thus, according to the Commissioner, the goods in issue are clearly not similar in design, function or purpose and, as such, cannot be classified as curling irons.

Finally, the Commissioner argued that the Tribunal’s decision in *Gilmour* could be applied in this instance only if the Tribunal concluded that there is a substantial similarity in the design and purpose between the goods in issue and curling irons. According to the Commissioner, since, contrary to curling irons, the essential purpose and design of straighteners and crimpers is to remove curl, they should be classified under tariff item No. 8516.32.90 as other electro-thermic hair-dressing apparatus.

3. (1 November 1993) AP-92-102 and AP-92-354 (CITT) [*Gilmour*].

4. *Supra* note 2, schedule [*General Rules*].

5. *Supra* note 2, schedule.

6. Tenth ed., s.v. “curling iron”.

In the alternative, the Commissioner submitted that one of the goods in issue, the crimper/straightener, would be classifiable under tariff item No. 8516.32.90 in accordance with Rule 3 (c) of the *General Rules*. He submitted that, if crimping is considered to fall within the definition of curl, this iron has a dual purpose and should be considered as two articles in one. As such, Rule 3 (c) would apply and requires that, in choosing between two competing tariff items, the tariff item which occurs last in numerical order is the one that should be chosen.

DECISION

Section 10 of the *Customs Tariff* provides that the classification of imported goods under a tariff item shall be determined in accordance with the *General Rules* and the *Canadian Rules*. Section 11 of the *Customs Tariff* provides that, in interpreting the headings and subheadings of the schedule, regard shall be had to the *Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System*⁷ and the *Explanatory Notes to the Harmonized Commodity Description and Coding System*.⁸

The *General Rules* are structured in a cascading form. If the classification of an article cannot be determined in accordance with Rule 1, then regard must be had to Rule 2, etc. Rule 1 provides the following:

The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions.

Moreover, Rule 1 of the *Canadian Rules* reiterates that the classification of goods under the tariff item of a subheading or heading shall be determined according to the *General Rules*.

The Tribunal notes that the parties agree that the goods in issue are properly classified in subheading No. 8516.32 as other hair-dressing apparatus. The Tribunal agrees with the parties in this respect. The competing tariff items in this appeal concern, therefore, whether these apparatus are curling irons.

There is no definition of the term “curling iron” in the tariff nomenclature. There are no chapter notes or explanatory notes that deal with this term. As recognized in previous decisions,⁹ the Tribunal will therefore look to the ordinary meaning of the term as found in conventional dictionaries. The Tribunal considered the dictionary definition of “curling iron” found in *Merriam-Webster’s Collegiate Dictionary*, in which it is defined as a “metal instrument which is heated and around which a lock of hair to be curled or waved is wound”.

The Tribunal is of the view that the goods in issue do not meet the dictionary definition of the term “curling iron”, which supports the ordinary meaning of the word. While the evidence shows that the straighteners and crimpers can be used for different purposes, including curling hair, the Tribunal notes that, with their two metal plates, they are not primarily designed to curl hair like a curling iron does with its heated metal rod. According to the evidence, the goods in issue are advertised as apparatus used to style hair in many different ways.

7. Customs Co-operation Council, 1st ed., Brussels, 1987.

8. Customs Co-operation Council, 2d ed., Brussels, 1996.

9. See, for example, *The Stevens Company Limited v. Deputy M.N.R.* (20 December 1999), AP-98-067 (CITT).

The Tribunal further notes that the evidence shows that Conair's Web site provides separate headings for crimpers, straighteners and curling irons and that, as such, Conair advertises them as different products. Finally, the Tribunal is not convinced by the evidence that, because of their physical characteristics, purpose and design, the goods in issue are very similar to curling irons and that, as such, they should be classified as "curling irons".

In light of the foregoing, the Tribunal finds that, as the goods in issue cannot be considered "curling irons", they are properly classified under tariff item No. 8516.32.90 as other electro-thermic hair-dressing apparatus. Consequently, the appeal is dismissed.

Zdenek Kvarda

Zdenek Kvarda
Presiding Member