



Ottawa, Friday, January 31, 1992

**Appeal No. AP-91-113**

IN THE MATTER OF an appeal heard on November 19, 1991, under section 67 of the *Customs Act*, R.S.C., 1985, c. 1 (2nd Supp.) as amended;

AND IN THE MATTER OF a decision of the Deputy Minister of National Revenue for Customs and Excise dated March 20, 1991, with respect to a request for a re-determination pursuant to section 63 of the *Customs Act*.

**BETWEEN**

**MARC KEMPER**

**Appellant**

**AND**

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

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is allowed.

Robert C. Coates, Q.C.  
Robert C. Coates, Q.C.  
Presiding Member

Arthur B. Trudeau  
Arthur B. Trudeau  
Member

Sidney A. Fraleigh  
Sidney A. Fraleigh  
Member

Robert J. Martin  
Robert J. Martin  
Secretary

*UNOFFICIAL SUMMARY*

**Appeal No. AP-91-113**

**MARC KEMPER**

**Appellant**

**and**

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

**Respondent**

*This is an appeal under section 67 of the Customs Act from a re-determination made by the Deputy Minister of National Revenue, Customs and Excise, classifying the Nova Spirit Stun Gun as a weapon whose importation is prohibited under tariff code 9965, Schedule VII of the Customs Tariff.*

***HELD:*** *The appeal is allowed*

*Place of Hearing:* Ottawa  
*Date of Hearing:* November 19, 1991  
*Date of Decision:* January 31, 1992

*Tribunal Members:* Robert C. Coates, Q.C., Presiding Member  
Arthur B. Trudeau, Member  
Sidney A. Fraleigh, Member

*Counsel for the Tribunal:* Brenda C. Swick-Martin

*Clerk of the Tribunal:* Janet Rumball

*Appearances:* Marc Kemper, for the appellant  
Geoffrey S. Lester, for the respondent

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**MARC KEMPER**

**Appellant**

**and**

**THE DEPUTY MINISTER OF NATIONAL REVENUE  
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TRIBUNAL: ROBERT C. COATES, Q.C., Presiding Member  
ARTHUR B. TRUDEAU, Member  
SIDNEY A. FRALEIGH, Member

**REASONS FOR DECISION**

This is an appeal under subsection 67(1) of the *Customs Act*<sup>1</sup> (the Act) from a re-determination of the Deputy Minister of National Revenue, Customs and Excise, classifying the Nova Spirit Stun Gun (the Nova Spirit) as a prohibited weapon under the *Prohibited Weapons Order, No. 3* (the Order).<sup>2</sup> Accordingly, the Nova Spirit is subject to the provisions of tariff code 9965, Schedule VII of the *Customs Tariff*, which prohibits the importation of offensive weapons as defined in the *Criminal Code*.

The issue in this appeal is whether the Nova Spirit is a prohibited weapon within the meaning of the Order.

The Order reads, in part, as follows:

*2. The following devices are hereby declared to be prohibited weapons:*

*(a) the device known as "Taser Public Defender", being a gun or a device similar to a gun capable of injuring, immobilizing or otherwise incapacitating a person by the discharge therefrom of darts or any other object carrying an electric current or substance; and*

*(b) any other device similar to the device referred to in paragraph (a).*

The Order declares to be a prohibited weapon the device known as the "Taser Public Defender," being a gun or a device similar to a gun that discharges darts or any other object carrying an electric current or substance, or any other similar device. The Tribunal is of the opinion that the discharge of darts or any other object carrying an electric current or substance is a requisite condition for a device to fall within the definition of prohibited weapons prescribed by the Order.

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1. R.S.C., 1985, c. 1 (2nd Supp.) as amended.

2. Order in Council P.C. 1978-873, (SOR/78-278, p. 1272).

The Nova Spirit is not a device that discharges darts or any other object carrying an electric current or substance. Instead, it produces an electric current at the fixed electrodes that are at the extremity of the device, and the electric current is only transmitted to a person when physical contact is made between the device and the person.

The definition of prohibited weapons in the Order is very specific in that reference is made to the "Taser Public Defender" or any other similar device that discharges darts or any other object. For the above noted reasons, the Tribunal is of the opinion that the Nova Spirit is not properly classified as a prohibited weapon within the meaning of the Order.

Accordingly, the appeal is allowed.

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.  
Presiding Member

Arthur B. Trudeau

Arthur B. Trudeau  
Member

Sidney A. Fraleigh

Sidney A. Fraleigh  
Member