



Ottawa, Wednesday, May 19, 1993

Appeal No. AP-91-183

IN THE MATTER OF an appeal heard on November 5, 1992, under subsection 67(1) of the *Customs Act*, R.S.C. 1985, c. 1 (2nd Supp.);

AND IN THE MATTER OF decisions of the Deputy Minister of National Revenue for Customs and Excise dated October 24, 1991, with respect to requests for re-determination under subsection 63(1) of the *Customs Act*.

BETWEEN

KARL HAGER LIMB & BRACE (KELOWNA) LTD.

Appellant

AND

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

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed.

Michèle Blouin
Michèle Blouin
Presiding Member

John C. Coleman
John C. Coleman
Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

Appeal No. AP-91-183

KARL HAGER LIMB & BRACE (KELOWNA) LTD.

Appellant

and

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

Respondent

This is an appeal under subsection 67(1) of the Customs Act from decisions of the Deputy Minister of National Revenue for Customs and Excise dated October 24, 1991. The issue in this appeal is whether goods described as wool stump socks and nylon sheaths are more properly classified under tariff item No. 9021.19.30 as either "Other orthopaedic or fracture appliances" or parts and accessories of such appliances, as submitted by the appellant, or under tariff item No. 6114.30.00 as other garments, knitted or crocheted, of man-made fibres, under tariff item No. 6117.80.90 as other made up knitted clothing accessories or, alternatively, under tariff item No. 6307.90.99 as other made up articles of other textile materials, as submitted by the respondent.

HELD: *The appeal is allowed. The wool stump socks and nylon sheaths are more properly classified in heading No. 90.21, more precisely under tariff item No. 9021.30.00 as accessories to "Other artificial parts of the body," as opposed to tariff item No. 9021.19.30.*

Place of Hearing: Vancouver, British Columbia

Date of Hearing: November 5, 1992

Date of Decision: May 19, 1993

Tribunal Members: Michèle Blouin, Presiding Member

John C. Coleman, Member

Sidney A. Fraleigh, Member

Counsel for the Tribunal: Brenda C. Swick-Martin

Shelley Rowe

Clerk of the Tribunal: Nicole Pelletier

Appearances: Geoffrey Sillence, for the appellant

Wayne D. Garnons-Williams, for the respondent

Appeal No. AP-91-183

KARL HAGER LIMB & BRACE (KELOWNA) LTD.

Appellant

and

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

Respondent

TRIBUNAL: MICHÈLE BLOUIN, Presiding Member
JOHN C. COLEMAN, Member
SIDNEY A. FRALEIGH, Member

REASONS FOR DECISION

This is an appeal under subsection 67(1) of the *Customs Act*¹ (the Act) from decisions of the Deputy Minister of National Revenue for Customs and Excise (the Deputy Minister) dated October 24, 1991, under subsection 63(3) of the Act.

Karl Hager Limb & Brace (Kelowna) Ltd. (Karl Hager) is an accredited facility of prosthetics and orthotics which imported into Canada goods described as wool stump socks and nylon sheaths (socks and sheaths). The sheaths are designed to be worn over the remaining portion of a limb, amputated below the knee, and are made of 100 percent stretch nylon yarn. They consist of a soft interior which is the part worn next to the skin and a rough exterior which grips the outer sock, thereby preventing movement between the sheath and the sock. Their purpose is to prevent breakdown of the stump caused from heat, inflammation and abrasion due to direct contact of the socket of a prosthesis and a residual limb. The sock is designed to be worn over the sheath to provide a cushion between the amputated limb and the rigid socket of a prosthesis.

The socks and sheaths were imported on March 9 and 16, 1990, respectively. At the time of importation, both the socks and sheaths were classified under tariff item No. 6114.20.00 as other garments, knitted or crocheted, of cotton. Under paragraph 60(1)(a) of the Act, the appellant requested a re-determination of the tariff classification of the socks and sheaths under tariff item No. 9021.19.30 as either "Other orthopaedic or fracture appliances" or parts and accessories of such appliances. A designated officer from the Department of National Revenue disallowed the request and maintained the tariff classification of the socks and sheaths under tariff item No. 6114.20.00 pursuant to subsection 60(3) of the Act. The appellant made further requests for re-determination under paragraph 63(1)(a) of the Act, and, in decisions under subsection 63(3) of the Act, the Deputy Minister classified the socks and sheaths under tariff item No. 6117.80.90 as other made up knitted clothing accessories.

The issue in this appeal is whether the socks and sheaths are more properly classified under tariff item No. 9021.19.30 as either "Other orthopaedic or fracture appliances" or parts and accessories of such appliances, as submitted by the appellant, or under tariff item No. 6114.30.00 as other garments, knitted or crocheted, of man-made fibres, under tariff item No. 6117.80.90 as

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

other made up knitted clothing accessories or, alternatively, under tariff item No. 6307.90.99 as other made up articles of other textile materials, as submitted by the respondent.

For purposes of this appeal, the relevant tariff nomenclature from Schedule I to the *Customs Tariff*² is as follows:

- 61.14 *Other garments, knitted or crocheted.*
- 6114.30.00 *-Of man-made fibres*
- 61.17 *Other made up clothing accessories, knitted or crocheted; knitted or crocheted parts of garments or of clothing accessories.*
- 6117.80 *-Other accessories*
- 6117.80.90 *---Other*
- 63.07 *Other made up articles, including dress patterns.*
- 6307.90 *-Other*
- 6307.90.99 *----Of other textile materials*
- 90.21 *Orthopaedic appliances, including crutches, surgical belts and trusses; splints and other fracture appliances; artificial parts of the body; hearing aids and other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability.*
- 9021.19.30 *---Other orthopaedic or fracture appliances*

At the hearing, Mr. Geoffrey Sillence, Manager of Karl Hager, appeared and testified on behalf of the appellant. He showed the Tribunal an example of the product, which he described as an artificial leg, and demonstrated how the socks and sheaths are worn over the stump and how the stump is then put into a liner which fits into the artificial leg.

During cross-examination, Mr. Sillence established that there were no straps, attachments, buttons or snaps that attached the socks and sheaths to the artificial limb, that the socks and sheaths came in a variety of sizes and that they were not designed for a particular type of artificial limb, for example, a walking as opposed to a running artificial limb. He also confirmed that, to his knowledge, not all the people who wear artificial limbs use the socks and sheaths, but he stated that all the people who purchase artificial limbs from the appellant receive socks and sheaths as part of the package.

In his brief, counsel for the respondent argued that the socks and sheaths should be classified under tariff item No. 6114.30.00 as other garments, knitted or crocheted, of man-made fibres. Counsel referred to The Concise Oxford Dictionary of Current English³ which defines

2. R.S.C. 1985, c. 41 (3rd Supp.).

3. Seventh Edition (Oxford: Clarendon Press, 1982).

"garment"⁴ as an "article of dress; (in *pl.*) clothes" and "clothes"⁵ as "things worn to cover the body and limbs" and submitted that the prosthetic socks and sheaths are knitted garments not more specifically provided for elsewhere and that they are designed to cover the residual portion of an amputated limb. Alternatively, counsel submitted that the prosthetic socks and sheaths should be classified under tariff item No. 6307.90.99 as other made up articles of other textile materials.

Counsel for the respondent argued a further alternative that, if the Tribunal was not satisfied that tariff item No. 6114.30.00 was the proper classification and was considering to classify the socks and sheaths under tariff item No. 9021.30.00, it should classify the socks and sheaths as accessories and not parts of artificial limbs. Counsel referred to the decisions of the Tariff Board in *Robert Bosch (Canada) Ltd. v. The Deputy Minister of National Revenue for Customs and Excise*⁶ and *Mitel Corporation v. The Deputy Minister of National Revenue for Customs and Excise*⁷ and submitted that the test for determining whether a product is a "part" is to determine whether the product is committed for use with and integral, necessary and dedicated to the main product. Counsel argued that, since the socks and sheaths are not designed for use with a particular artificial limb and since not all amputees use them, they do not meet the established criterion for parts.

Counsel for the respondent referred to the Tariff Board decisions in *J.H. Ryder Machinery Co. Limited v. The Deputy Minister of National Revenue for Customs and Excise*⁸ and *General Supply Company of Canada v. The Deputy Minister of National Revenue for Customs and Excise*⁹ and suggested that, in determining if a product is an accessory, the test is whether a product is subordinate, adjunct, or subsidiary or ancillary. Counsel submitted that the socks and sheaths enhance the functioning of the limb and that there is a subsidiary, adjunct relationship.

In the Tribunal's view, the socks and sheaths are more properly classified in heading No. 90.21, more precisely under tariff item No. 9021.30.00 as accessories to "Other artificial parts of the body," as opposed to tariff item No. 9021.19.30 as either "Other orthopaedic or fracture appliances" or parts and accessories of such appliances.

In applying Rule 1 of the General Rules for the Interpretation of the Harmonized System¹⁰ (the General Rules), the Tribunal looks first to the terms of the headings and any relative Section or Chapter Notes. The Tribunal notes that heading No. 90.21 includes several distinct items, one is "orthopaedic appliances" and another is "artificial parts of the body." Counsel for the respondent offered several medical dictionary definitions for the words "orthopaedic"¹¹ and "prosthesis."¹² Having reviewed all of these sources, the Tribunal finds

4. *Ibid.* at 407.

5. *Ibid.* at 176.

6. (1985), 10 T.B.R. 110.

7. (1985), 10 T.B.R. 90.

8. (1962), 2 T.B.R. 292.

9. (1955), 1 T.B.R. 214.

10. *Supra*, note 2, Schedule I.

11. Dorland's Illustrated Medical Dictionary, 25th ed. (Philadelphia: W.B. Saunders) at 1099; Stedman's Medical Dictionary, 22nd ed. (Baltimore: The Williams & Wilkins Company) at 891; and The Bantam Medical Dictionary, Laurence Urdang Associates at 293.

12. Dorland's Illustrated Medical Dictionary, *ibid.* at 1267; Stedman's Medical Dictionary, *ibid.* at 1027; and The Bantam Medical Dictionary, *ibid.* at 339.

that "orthopaedic" is commonly defined as relating to the preservation, restoration and development of the form and function of the extremities, the spine and associated structures by medical, surgical and physical methods. Prostheses are commonly defined as fabricated substitutes for missing parts of the body, such as limbs.

On the basis of Mr. Sillence's description of the "artificial leg" and the common dictionary definition of "orthopaedic," the Tribunal is of the view that the product with which the socks and sheaths are used is a prosthesis, or an artificial part of the body, as opposed to an orthopaedic appliance. However, the Tribunal is also of the view that the socks and sheaths are not themselves artificial parts of the body and cannot be classified as such.

The application of Rule 1 of the General Rules also requires a review of the Section and Chapter Notes. The Tribunal finds that Note 2 to Chapter 90 of Schedule I to the *Customs Tariff* specifically addresses the tariff treatment of parts and accessories of goods classified in heading No. 90.21. In particular, Note 2 (b) provides that:

Other parts and accessories, if suitable for use solely or principally with a particular kind of machine, instrument or apparatus, or with a number of machines, instruments or apparatus of the same heading (including a machine, instrument or apparatus of heading No. 90.10, 90.13 or 90.31) are to be classified with the machines, instruments or apparatus of that kind.

Therefore, the socks and sheaths may be classified as parts and accessories of artificial parts of the body, if it is determined that they are suitable for use solely or principally with the artificial parts of the body.

In considering the issue of whether the socks and sheaths are for use solely and principally with artificial parts of the body, the Tribunal relies on the testimony of the appellant's representative and the industry and product literature in the respondent's brief. As was stated by Mr. Sillence at the hearing, the sock is made for "one thing, and one thing only, and that is to be part and parcel of [the artificial limb]."¹³ Mr. Sillence estimated that 95 percent of all artificial limb users also use socks and sheaths and that all of the appellant's clients use the socks and sheaths.

The industry and product literature provided in the respondent's brief indicates that the socks and sheaths are specifically intended for use with the artificial limbs to enhance their fit and comfort. In her article "Soft-Sock: The Development of a New Interface"¹⁴ as provided in the respondent's brief, Martha Field, M.S., Manager of Research and Development, Knit-Rite, Inc., who was one of the suppliers of prosthetic sheaths to the appellant, states as follows:

the major function of a prosthetic sock is to give comfort and enhance the efficiency of the prosthesis by "providing cling to the residual limb and slide with respect to the socket wall."

In addition, the product literature of Daw Industries, Inc. indicates that the socks and sheaths are available in a wide range of sizes and shapes and are designed with the stump contour

13. Transcript at 44.

14. (1985) 39 Orthotics and Prosthetics 70.

in mind. The size and shape of socks and sheaths chosen is of utmost importance for ensuring the effectiveness of the artificial limb.

The Tribunal is satisfied, on the basis of the testimony and the literature, that the socks and sheaths are for use solely and principally with artificial parts of the body. Having reached this conclusion, it must further be determined whether the socks and sheaths are parts and accessories of the artificial limbs. The Tribunal looks to the ordinary meaning given to these words in conventional dictionaries for assistance. In The Oxford English Dictionary, "accessory" is defined in the following manner:

*something contributing in a subordinate degree to a general result or effect; an adjunct, or accompaniment.*¹⁵

In the same dictionary, "part" is defined in the following manner:

*a portion, division, section, element, constituent, fraction, fragment, piece.*¹⁶

In view of the fact that the socks and sheaths are not attached with any degree of permanence and are not necessary for the functioning of the artificial limbs, as was indicated in Mr. Sillence's testimony and shown through the exhibits, they cannot be described as a "portion," an "element" or a "constituent" of an artificial part of the body. Rather, the socks and sheaths enhance the effectiveness and comfort of the artificial parts of the body. Most people who wear artificial parts of the body also wear the socks and sheaths to protect the stump and to improve the effectiveness and degree of comfort. The socks and sheaths are, therefore, an accompaniment to the artificial part of the body and serve a subordinate function or role to the artificial part of the body. The Tribunal, therefore, finds that the socks and sheaths are accessories to artificial parts of the body.

The appeal is allowed. The Tribunal finds that the socks and sheaths are more properly classified in heading No. 9021, more precisely under tariff item No. 9021.30.00 as accessories to "Other artificial parts of the body," as opposed to tariff item No. 9021.19.30 as either "Other orthopaedic or fracture appliances" or parts and accessories of such appliances.

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15. Volume I, 2nd ed. (Oxford: Clarendon Press, 1989) at 74.

16. *Ibid.*, Volume XI at 258.