



Ottawa, Friday, October 15, 1993

Appeal No. AP-92-194

IN THE MATTER OF an appeal heard on March 26, 1993,
under section 67 of the *Customs Act*, R.S.C. 1985,
c. 1 (2nd Supp.);

AND IN THE MATTER OF four decisions of the Deputy
Minister of National Revenue for Customs and Excise dated
October 28, 1992, with respect to requests for
re-determination under section 63 of the *Customs Act*.

BETWEEN

NATIONAL GEOGRAPHIC SOCIETY

Appellant

AND

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

Respondent

DECISION OF THE TRIBUNAL

The appeal is allowed in part.

Lise Bergeron
Lise Bergeron
Presiding Member

W. Roy Hines
W. Roy Hines
Member

Charles A. Gracey
Charles A. Gracey
Member

Michel P. Granger
Michel P. Granger
Secretary

UNOFFICIAL SUMMARY

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NATIONAL GEOGRAPHIC SOCIETY

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 four decisions of the Deputy Minister of National Revenue for Customs and Excise dated October 28, 1992. There are two issues in this appeal. The first issue is whether goods described as engagement calendars are properly classified under tariff item No. 4820.10.00 as "diaries and similar articles," as determined by the respondent, or more properly classified under tariff item No. 4910.00.10 as "advertising calendars not containing publicity material relating to Canadian products or services," as contended by the appellant. The second issue is whether goods described as wall calendars are properly classified under tariff item No. 4910.00.90 as "other calendars of any kind, printed, including calendar blocks," as determined by the respondent, or more properly classified under tariff item No. 4910.00.10 as "advertising calendars not containing publicity material relating to Canadian products or services," as contended by the appellant.

HELD: *The appeal is allowed in part. Since the Explanatory Notes to the Harmonized Commodity Description and Coding System specifically exclude classifying engagement calendars under tariff item No. 4910.00.10, the Tribunal finds that the engagement calendars are properly classified under tariff item No. 4820.10.00 as "diaries and similar articles." The wall calendars have features which call the public's attention to the National Geographic Society and to the products that it has to offer, with the intention of inciting the public to purchase its products. In the Tribunal's view, these features make the wall calendar equivalent to an advertising calendar. Further, the Tribunal finds that there is no material in the calendar relating to Canadian products or services. The Tribunal, therefore, finds that the wall calendars are more properly classified under tariff item No. 4910.00.10 as "advertising calendars not containing publicity material relating to Canadian products or services."*

*Place of Hearing: Ottawa, Ontario
Date of Hearing: March 26, 1993
Date of Decision: October 15, 1993*

*Tribunal Members: Lise Bergeron, Presiding Member
W. Roy Hines, Member
Charles A. Gracey, Member*

Counsel for the Tribunal: Shelley Rowe

Clerk of the Tribunal: Dyna Côté

*Appearances: David Thomas Mulholland, for the appellant
Gilles Villeneuve, for the respondent*

Appeal No. AP-92-194

NATIONAL GEOGRAPHIC SOCIETY

Appellant

and

THE DEPUTY MINISTER OF NATIONAL REVENUE
FOR CUSTOMS AND EXCISE

Respondent

TRIBUNAL: LISE BERGERON, Presiding Member
W. ROY HINES, Member
CHARLES A. GRACEY, Member

REASONS FOR DECISION

This is an appeal under section 67 of the *Customs Act*¹ (the Act) from four decisions of the Deputy Minister of National Revenue for Customs and Excise dated October 28, 1992. There are two issues in this appeal. The first issue is whether goods described as engagement calendars are properly classified under tariff item No. 4820.10.00 as "diaries and similar articles," as determined by the respondent, or more properly classified under tariff item No. 4910.00.10 as "advertising calendars not containing publicity material relating to Canadian products or services," as contended by the appellant. The second issue is whether goods described as wall calendars are properly classified under tariff item No. 4910.00.90 as "other calendars of any kind, printed, including calendar blocks," as determined by the respondent, or more properly classified under tariff item No. 4910.00.10 as "advertising calendars not containing publicity material relating to Canadian products or services," as contended by the appellant.

The relevant nomenclature from Schedule I to the *Customs Tariff*² is as follows:

48.20	<i>Registers, account books, note books, order books, receipt books, letter pads, memorandum pads, diaries and similar articles, exercise books, blotting-pads, binders (loose-leaf or other), folders, file covers, manifold business forms, interleaved carbon sets and other articles of stationery, of paper or paperboard; albums for samples or for collections and book covers, of paper or paperboard.</i>
4820.10.00	<i>-Registers, account books, note books, order books, receipt books, letter pads, memorandum pads, diaries and similar articles</i>
4910.00	<i>Calendars of any kind, printed, including calendar blocks.</i>
4910.00.10	<i>---Religious calendars; advertising calendars not containing publicity material relating to Canadian products or services</i>
4910.00.90	<i>---Other</i>

1. R.S.C. 1985, c. 1 (2nd Supp.).
2. R.S.C. 1985, c. 41 (3rd Supp.).

The appellant's representative, Mr. Mulholland, did not call any witnesses, but proceeded to give evidence as to the nature of the wall calendars and engagement calendars. Mr. Mulholland described the features of the wall calendar. He pointed out the two tear-out inserts, one for ordering the engagement calendar and wall calendar and the other for subscribing to National Geographic, National Geographic Traveler or National Geographic World magazines. These inserts are stapled into the binding of the wall calendar. The name "National Geographic Society" also appears on the cover and back of the wall calendar. The engagement calendar contains the same two tear-out inserts and has the name "National Geographic Society" on the cover and back.

Counsel for the respondent introduced Mr. Paul Delisle, Vice-President and co-owner of Aupel Inc., a publishing company that specializes in the publication of planners and agendas, as an expert in the area of publishing calendars, agendas and diaries. On the basis of Mr. Delisle's stated involvement within the industry for agendas and calendars, the Tribunal qualified him as an expert and proceeded to hear his evidence.

Mr. Delisle discussed the characteristics of a diary, namely, that it refers to the date, the day of the week, the month and the year, that it can be simple with only lines, or more complicated for use as a time-management system and include times, and that it is available in a variety of formats, i.e. one day per page, two days per page, a week at a glance and a month at a glance. In Mr. Delisle's opinion, the engagement calendar produced by the appellant is a diary, not a calendar. A calendar, in Mr. Delisle's view, does not usually exceed 32 pages and does not display less than one month per page. However, the engagement calendar displays only one week per page.

In discussing advertising calendars, Mr. Delisle stated that Aupel Inc. used to publish advertising calendars, and he produced an example of such calendars. He pointed out that the back page displaying the name, address and product line of a particular company extended below the pages containing the dates, thereby ensuring that, when the calendar was changed each month, the advertising information would continue to be displayed and would therefore remain constant throughout the year. He stated that the example was an advertising calendar because the user was able to clearly identify the company or product throughout the year. In his view, the wall calendars in issue are not advertising calendars since the tear-out inserts are inside the calendar and are not part of the calendar itself.

With respect to the engagement calendars in issue, the appellant submitted that they have the essential character of a calendar since they do not share some of the characteristics of diaries or daytimers. In particular, the appellant referred to the fact that the times of the day are not printed under the respective day, that the type of paper used is high gloss and difficult to write on, and that the calendar is not meant to be a "book to be written upon."

Counsel for the respondent referred to Rule 1 of the General Rules for the Interpretation of the Harmonized System,³ which provides that goods are to be classified in accordance with the headings and any relative Section or Chapter Notes. He submitted that engagement calendars are specifically provided for in heading No. 48.20. In support of this position, he referred to the Explanatory Notes⁴ to heading No. 49.10 which specifically exclude,

3. *Ibid.*, Schedule I.

4. Explanatory Notes to the Harmonized Commodity Description and Coding System, Customs

"Memorandum pads incorporating calendars and diaries (including so-called engagement calendars)."

In addition, counsel for the respondent submitted that the French equivalent for the word "diaries" in heading No. 48.20, "*agendas*," is equally authoritative for determining tariff classification. The word "*agendas*" includes what are referred to in English as engagement calendars and diaries. Counsel submitted that the terms "engagement calendars," "diaries" and "*agendas*" all refer to the same product and, therefore, submitted that the engagement calendars in issue are properly classified in heading No. 48.20.

The appellant's representative submitted that the wall calendars constitute advertising and specifically highlighted the fact that the name of the appellant appears on both the front and back of the calendar and that the calendar contains two tear-out subscription inserts fastened in the same manner as the calendar itself. The appellant's representative relied on a decision of the Tariff Board and two excise tax interpretations to support this position. He referred to *AKA Music Import Distribution v. The Deputy Minister of National Revenue for Customs and Excise*,⁵ wherein the Tariff Board classified calendars containing photographs of a popular British singer, and which were primarily used to promote the sale of that singer's records and tapes, as advertising calendars not relating to Canadian products or services. The excise tax interpretations referred to both provide that "'Advertising' for purposes of Part III of Schedule III [to the Act] includes ... subscription advertisements."⁶

Counsel for the respondent focused on the essential character of the wall calendars and submitted that the two tear-out inserts and the name "National Geographic Society" printed on the front and back of the calendar are not sufficient to qualify the wall calendars as advertising calendars. Counsel also argued that, when the wall calendar is being used, i.e. hanging on a wall, the name is no longer visible and the inserts must be taken out, thereby removing any advertising element.

The Tribunal finds that the engagement calendars are properly classified under tariff item No. 4820.10.00 as "diaries and similar articles." In considering the proper tariff classification of the engagement calendars, the Tribunal relies on the direction in section 11 of the *Customs Tariff* that regard shall be had to the Explanatory Notes in interpreting the relevant headings in Schedule I. As pointed out by counsel for the respondent, the Explanatory Notes to heading No. 49.10, which is the heading proposed by the appellant, specifically exclude "diaries (including so-called engagement calendars)" of heading No. 48.20. After having examined the engagement calendars in issue and after having heard the testimony of Mr. Delisle, the Tribunal is of the view that the engagement calendars are best described by the phrase "diaries and similar articles" in heading No. 48.20 and are therefore excluded from being classified in heading No. 49.10. The appellant's contention that the paper is high gloss and difficult to write on does not change the fact that there is a space associated with each day which is obviously intended for the recording of information.

With respect to the wall calendars, the Tribunal observes that the Explanatory Notes do not provide guidance in interpreting the meaning of the term "advertising calendars" under tariff item No. 4910.00.10. There was no disagreement between the parties that the wall calendar is

Co-operation Council, 1st ed., Brussels, 1986.

5. 13 T.B.R. 122.

6. Tax Interpretations, Department of National Revenue, Customs and Excise, Tax Interpretations - Excise, September 30, 1985.

a calendar, and the Tribunal agrees. However, the word "calendars" is qualified by the word "advertising," which, in the absence of any direction in the Explanatory Notes, the Tribunal interprets in accordance with its common and ordinary usage.

The Webster's Ninth New Collegiate Dictionary⁷ defines the word "advertising" as "the action of calling something to the attention of the public" and the verb "advertise" as the act of "call[ing] public attention to esp. by emphasizing desirable qualities so as to arouse a desire to buy or patronize." Similarly, The Oxford English Dictionary⁸ defines the word "advertising" to mean "A bringing into notice; spec. by paid announcement in a printed journal, by prominent display of placards, etc.," and the verb "advertise"⁹ as "To give public notice of, to make publicly known, or call attention to, by a published announcement in a journal, by a circular, etc." Therefore, the common English usage of the word "advertising" in conjunction with the verb "to advertise" is to call the public's attention to something.

The Tribunal recognizes that it is well-settled law that the one construction of a statutory provision common to both the English and French languages is to prevail, both languages being equally authoritative.¹⁰ The corresponding French language version of tariff item No. 4910.00.10 uses the word "*publicitaires*" which is a derivative of the noun "*publicité*" (advertising or advertisement). The dictionary Le Grand Robert de la langue française¹¹ defines the word "*publicité*" as "*le fait de faire connaître (un produit, un type de produits) et d'inciter à l'acquérir*" ([translation] the action of calling attention to a product, a type of product, so as to arouse a desire to buy) and the Dictionnaire de la langue française¹² defines "*publicité*" as "*Ensemble des moyens employés pour faire connaître une entreprise industrielle, commerciale, pour accroître la vente d'un produit*" ([translation] a number of ways used to bring attention to an industry, a company, to increase the sales of a product). Thus, the common French usage of the word "*publicitaires*" (advertising) as translated into English is to bring information to the attention of the public in order to get it to buy something.

What is common to both the French and the English definitions of the word "advertising" is the notion that it is used as a means of calling the public's attention to information with the intention of inciting the public to make certain purchasing or patronage decisions.

In the Tribunal's view, the wall calendar is an advertising calendar according to the common and ordinary meaning of "advertising" and "*publicitaires*." The wall calendar displays the name "National Geographic Society" on the front and back and contains two tear-out inserts, one to be used to subscribe to National Geographic magazines and the other to order the wall calendars and engagement calendars. In the Tribunal's view, these features do call the public's attention to the National Geographic Society and to the products that it has to offer, namely, the calendars and magazines.

The Tribunal disagrees with the suggestion of counsel for the respondent that, once the inserts are removed, the calendar no longer contains advertising. Whether left in or torn out,

7. (Markham: Thomas Allen & Son, 1991) at 59.

8. Vol. 1, 2nd ed. (Oxford: Clarendon Press, 1989) at 191.

9. *Ibid.* at 190.

10. *Slaight Communications Inc. v. Davidson*, [1989] 1 S.C.R. 1038; *Official Languages Act*, R.S.C. 1985, c. 31 (4th Supp.).

11. Vol. 7, 2nd ed. (Montréal: Les Dictionnaires Robert - Canada S.C.C., 1987) at 890.

12. (Canada: Librairie Larousse (Canada), 1989) at 1529.

the inserts do serve the purpose of calling the public's attention to the products of the National Geographic Society. Furthermore, the name "National Geographic Society" always remains on the front and back of the wall calendar.

With respect to the issue of whether the wall calendar contains publicity material relating to Canadian products or services, the Tribunal does not find any material in the calendar connected to Canadian products or services. The wall calendars are therefore more properly classified under tariff item No. 4910.00.10 as "advertising calendars not containing publicity material relating to Canadian products or services."

The appeal is allowed in part. The engagement calendars are properly classified under tariff item No. 4820.10.00 as "diaries and similar articles," and the wall calendars are more properly classified under tariff item No. 4910.00.10 as "advertising calendars not containing publicity material relating to Canadian products or services."

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