



Ottawa, Wednesday, September 4, 1996

Appeal No. AP-94-333

IN THE MATTER OF an appeal heard on February 8, 1996,  
under section 67 of the *Customs Act*, R.S.C. 1985, c. 1  
(2nd Supp.);

AND IN THE MATTER OF a decision of the Deputy Minister of  
National Revenue dated November 2, 1994, with respect to a  
request for re-determination under section 63 of the *Customs Act*.

**BETWEEN**

**THE SOURCE ENTERPRISES LIMITED**

**Appellant**

**AND**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is allowed.

Raynald Guay  
Raynald Guay  
Presiding Member

Arthur B. Trudeau  
Arthur B. Trudeau  
Member

Desmond Hallissey  
Desmond Hallissey  
Member

Susanne Grimes  
Susanne Grimes  
Acting Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-94-333**

**THE SOURCE ENTERPRISES LIMITED**

**Appellant**

**and**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

This is an appeal pursuant to section 67 of the *Customs Act* from a decision of the Deputy Minister of National Revenue dated November 2, 1994, made under section 63 of the *Customs Act*. The issue in this appeal is whether the goods in issue, which are described as various hand-painted pub signs made of various materials such as wood, aluminum, steel, brass, plastic, etc., imported from Britain, are properly classified under tariff item Nos. 3926.90.40, 4421.90.40 and 8310.00.00 as articles of plastic, wood or metal, as determined by the respondent, or should be classified under tariff item No. 9701.10.10 as original paintings by artists, executed entirely by hand, as claimed by the appellant.

**HELD:** The appeal is allowed. In the Tribunal's view, the goods in issue are original paintings by artists, executed entirely by hand, and should, therefore, be classified under tariff item No. 9701.10.10.

Place of Hearing: Vancouver, British Columbia  
Date of Hearing: February 8, 1996  
Date of Decision: September 4, 1996

Tribunal Members: Raynald Guay, Presiding Member  
Arthur B. Trudeau, Member  
Desmond Hallissey, Member

Counsel for the Tribunal: Joël J. Robichaud

Clerk of the Tribunal: Anne Jamieson

Appearances: Robert J. Falconer, for the appellant  
Josephine A.L. Palumbo, for the respondent

Appeal No. AP-94-333

**THE SOURCE ENTERPRISES LIMITED**

**Appellant**

and

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: RAYNALD GUAY, Presiding Member  
ARTHUR B. TRUDEAU, Member  
DESMOND HALLISSEY, Member

**REASONS FOR DECISION**

This is an appeal pursuant to section 67 of the *Customs Act*<sup>1</sup> (the Act) from a decision of the Deputy Minister of National Revenue dated November 2, 1994, made under section 63 of the Act.

The goods in issue are described as various hand-painted pub signs made of various materials such as wood, aluminum, steel, brass, plastic, etc., imported from Britain. They were imported into Canada on September 3, 1992. At the time of importation, they were classified under tariff item No. 4911.91.90 of Schedule I to the *Customs Tariff*,<sup>2</sup> as other pictures. Subsequently, the goods in issue were re-classified under tariff item No. 8310.00.00 as “[s]ign-plates, name-plates, address-plates and similar plates, numbers, letters and other symbols, of base metal, excluding those of heading No. 94.05” if made of metal; under tariff item No. 3926.90.40 as “[s]igns, letters and numerals” if made of plastic; and under tariff item No. 4421.90.40 as “[s]igns, letters and numerals” if made of wood. Pursuant to paragraph 63(1)(b) of the Act, the appellant requested a further re-determination of the classification of the goods in issue under tariff item No. 9702.00.00 as “[o]riginal engravings, prints and lithographs.” In a decision dated November 2, 1994, the respondent confirmed the classification of the goods in issue under tariff item No. 8310.00.00.

The issue in this appeal is whether the goods in issue are properly classified under tariff item Nos. 3926.90.40, 4421.90.40 and 8310.00.00 as articles of plastic, wood or metal, as determined by the respondent, or should be classified under tariff item No. 9701.10.10 as original paintings by artists, executed entirely by hand, as claimed by the appellant. For purposes of this appeal, the relevant tariff nomenclature reads as follows:

39.26	Other articles of plastics and articles of other materials of heading Nos. 39.01 to 39.14.
3926.90.40	---Signs, letters and numerals
44.21	Other articles of wood.
4421.90.40	---Signs, letters and numerals; window shade or blind rollers; blinds; labels
8310.00.00	Sign-plates, name-plates, address-plates and similar plates, numbers, letters and other symbols, of base metal, excluding those of heading No. 94.05.

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

97.01	Paintings, drawings and pastels, executed entirely by hand, other than drawings of heading No. 49.06 and other than hand-painted or hand-decorated manufactured articles; collages and similar decorative plaques.
9701.10	-Paintings, drawings and pastels
9701.10.10	---Originals by artists
10	----Paintings
20	----Drawings
30	----Pastels

Two witnesses testified on behalf of the appellant: Mr. Paul Corballis, the author of a scholarly work entitled *Pub Signs*, who filed an affidavit with the Tribunal and who testified at the hearing via a speaker phone; and Mr. David Hornblow, a graphic designer, who testified at the hearing as an expert witness.

In his affidavit, Mr. Corballis described his experience and knowledge relating to pub signs. He explained that, when residing in Britain, he became fascinated by pubs as a social institution. In pursuit of his interest, he visited over 2,600 different pubs and collected over 40 pub signs. His book, *Pub Signs*, contains over 180 illustrations. Mr. Corballis explained that he is a member of the Inn Sign Society of Great Britain and that he has been a regular contributor to various information sheets, news articles and scholarly journals relating to inn signs and pub signs. He has also given several speeches to learned societies on the subject of pub signs. He explained that he is familiar with, and has examined, the pub signs imported by the appellant. He recognized them as being manufactured by Norman Hartley Signs Ltd. Mr. Corballis said that he knows the artist employees of Norman Hartley Signs Ltd. to be experts in the concept of painting, design and assembly of hand-painted pub signs and that their expertise has been recognized by persons knowledgeable in the subject of pictorial hand-painted pub signs, which they consider to be an art form expressing originality and style. In his view, "hand-painted" means that the design and concept of the signs have been, and are, the work done by hand of an artist and that this is so regardless of the material on which the handpainting is done.

According to Mr. Corballis, the pub signs are original paintings by artists in the generally accepted meaning of the term and a distinct art form accepted as such by knowledgeable persons both in Great Britain and in North America. In his view, this is separate and apart from any original purpose for which they are, or might have been, prepared such as advertisement for an inn, a pub or an ale house. In his opinion, items described as hand-painted pictorials or some similar description are paintings done by artists, in that their essential and dominant characteristic is that of an original handwork product of an artist or artists from conception to completion. They are the works of artists which involve manifestations of style, concept, originality, freedom of interpretation and expression, spontaneity, uniqueness, inspiration, creativity, talent, humour, imagination, graduated use of colour and contrasting use of light and dark subtle shading, all of which are controlled by the artists. In addition, Mr. Corballis explained that the handpainting of pictorial pub signs does not involve the use of mechanical, chemical, photo-electric, silk screen or engraving processes or the regular use of patterns. Finally, they are not the work of a conventional craftsman.

In cross-examination, Mr. Corballis testified that the pub signs are typically painted on the basis of instructions that the artist has received from the owner of the brewery or pub. He noted, however, that this is the same whether an artist is painting a portrait or pub sign. The artist is involved in the creation of the painting, but not the manufacture of the board. Mr. Corballis explained that it is possible to reproduce pub signs; however, this is rarely done. In fact, in answer to a question from the Tribunal, Mr. Corballis testified that each of the 2,600 pubs that he visited had a different sign. He also testified that the artist's name typically does not appear on the pub sign.

The appellant's second witness, Mr. Hornblow, also described his experience and knowledge relating to pub signs. He testified that the base or frame on which the pictorial pub sign is painted can be considered manufactured. However, the painting itself or the colour applied to the surface is an original handpainting done by an artist.

In cross-examination, Mr. Hornblow testified that the goods in issue cease to be pub signs once they are taken down. In his view, the goods in issue do not constitute a form of advertisement. Rather, they help identify the establishment. He also testified that the artist consults with the owner of the pub before starting to paint, just as any artist working on commission would do. He explained that the first thing that an artist needs to know to make a pub sign is the name of the establishment. The artist then provides a sketch to the pub owner to get it approved. If the owner is not satisfied with the sketch, the artist goes back and reworks it until it is right. Mr. Hornblow explained that pub signs need to be redone periodically because of the weather and deterioration. He said that the interesting thing is that there can be 20 pubs with the same name, but with different signs. The reason for this is that local artists are often chosen to paint the pictorials. He explained that if one wanted to produce a series of pub signs exactly the same, one would never get them hand-painted. Rather, they would be silk-screen printed or photographically reproduced. He testified that it is not unusual for a painting not to be signed by the artist. He said that craftsmen manufacture the signs, but artists paint the pictures on them. In Mr. Hornblow's view, the goods in issue are paintings.

One witness testified on behalf of the respondent: Mr. Ian M. Thom, Senior Curator at the Vancouver Art Gallery in Vancouver, British Columbia. Mr. Thom testified as an expert in western art. He explained that he was familiar with the goods in issue, having seen a few of them at the appellant's premises. In his view, the goods in issue are not paintings in the traditional sense of the term. Furthermore, they are not drawings or pastels. In Mr. Thom's opinion, the fact that the goods in issue are hand-painted does not mean that they are not signs. He testified that the definition of what constitutes an original painting, pastel or drawing changes a great deal in the art world. This means that what is considered to be a painting today may be completely different from what was considered to be a painting 100 years ago. Mr. Thom testified that, to determine whether or not a picture is a painting, he generally looks for some sort of original idea or emotion in the picture. He also looks for something that does not have a commercial purpose. In Mr. Thom's opinion, the goods in issue have a commercial purpose and constitute a form of advertising. Mr. Thom also testified that there is no clear definition of an artist. In his view, a person who applies paint to a surface is not necessarily an artist. In his opinion, the goods in issue are not original paintings or drawings because they have no aesthetic value. According to Mr. Thom, the goods in issue are more properly described as commercial art rather than paintings or art work. He also testified that he considers the making of pub signs to be a craft. He added that, for at least the last 150 years, artists who make fine art objects have identified themselves somewhere on their art work. Finally, he said that, in the western tradition, paintings are not repainted.

In cross-examination, Mr. Thom testified that, in his view, the proper definition of a painting is "an object produced by an artist for aesthetic purpose." He testified that he would not consider the goods in issue as "originals," as this term is generally defined in the art world. Counsel for the appellant showed Mr. Thom various laser-printed copies of works by such artists as William Hogarth and Andy Warhol. In most cases, Mr. Thom could not say whether or not they were originals. Mr. Thom testified that his understanding of the tariff nomenclature is that it refers to fine art, as opposed to decorative or commercial art, when it speaks of paintings, drawings and pastels. In answer to a question from the Tribunal, Mr. Thom testified that, in his view, a sign cannot be a painting because its purpose is commercial. He did say, however, that an artist can make a sign. He also stated that, in his view, there is a difference between repainted and restored, explaining that, generally, paintings are not repainted, they are restored.

On the basis of the evidence, counsel for the appellant argued that the goods in issue are paintings executed entirely by hand. According to counsel, when pictorial pub signs are described as hand-painted, it means that the design and concept thereof and the paintings thereof have been, and are, the work of an artist and that this is so regardless of the material on which the handpainting is done. Counsel argued that the goods in issue are paintings based on the ordinary and plain meaning of the word. In support of his argument, counsel referred to dictionary definitions of the word "painting." In counsel's view, the issue is not whether the paintings have aesthetic value or whether they are works of art. He argued that this cannot be the intent of the tariff nomenclature. Counsel argued that the goods in issue are not of a commercial nature and that they are not sign-plates, name-plates, address-plates or similar plates, numbers, letters or other symbols of base metal, as alleged by the respondent. Rather, they are original paintings by artists, executed entirely by hand, and should, therefore, be classified under tariff item No. 9701.10.10.

Counsel for the respondent argued that the goods in issue are designed to be a form of advertisement for a particular English pub or beer. Accordingly, the pub signs are of a commercial nature, and the painting on the sign is the work of a conventional craftsman. Counsel submitted that, whether or not the pub signs are hand-painted, they remain signs. Consequently, she argued that they were properly classified by the respondent. She maintained that signs, in general, are normally painted on a variety of surfaces by painters who are not artists, but rather artisans. Moreover, unlike artistic paintings which express a concept, signs are typically a form of advertisement for a particular article, company or service.

When classifying goods in Schedule I to the *Customs Tariff*, the application of Rule 1 of the *General Rules for the Interpretation of the Harmonized System*<sup>3</sup> is of the utmost importance. Rule 1 states that classification is first determined according to the terms of the headings and any relative Chapter Notes. Therefore, the Tribunal must determine whether the goods in issue are named or generically described in a particular heading. If they are, then they must be classified therein subject to any relative Chapter Note. Section 11 of the *Customs Tariff* provides that, in interpreting the headings or subheadings, the Tribunal shall have regard to the *Explanatory Notes to the Harmonized Commodity Description and Coding System*<sup>4</sup> (the Explanatory Notes).

The Tribunal first considered whether the goods in issue can be classified in heading No. 97.01 as "[p]aintings, drawings and pastels, executed entirely by hand." The evidence clearly shows that the goods in issue are executed or, more precisely, painted entirely by hand. The question, therefore, is whether or not the goods in issue are "paintings." The word "painting" is not defined anywhere in the tariff nomenclature. The Tribunal, therefore, referred to dictionary definitions of that word in order to determine its ordinary meaning. In *The Oxford English Dictionary*,<sup>5</sup> the word "painting" is defined as "[t]he result or product of applying paint or colour; colouring; pictorial decoration."<sup>6</sup> It is also defined as "[a] representation of an object or scene on a surface by means of colours; a picture."<sup>7</sup> In the Tribunal's view, these definitions clearly describe the goods in issue, and they are, therefore, paintings within the meaning of heading No. 97.01. The Tribunal makes this finding having had regard to the Explanatory Notes to that heading and the notes to Chapter 97. The Tribunal is of the view that the goods in issue do not fall within any of the exclusions described in the Explanatory Notes to heading No. 97.01 or the notes to Chapter 97. The Tribunal agrees with counsel for both parties that the issue is not whether the goods in issue are works of art. Furthermore,

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3. *Supra* note 2, Schedule I.

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

5. Second ed. (Oxford: Clarendon Press, 1989).

6. *Ibid.* Vol. XI at 72.

7. *Ibid.*

the Tribunal cannot read into the tariff nomenclature or into the dictionary definitions a requirement that there must be an aesthetic value to the paintings in order for them to be classified in heading No. 97.01.

To be classified under tariff item No. 9701.10.10, the paintings must be “[o]riginals by artists.” Again, these words are not defined anywhere in the tariff nomenclature. There was clearly disagreement amongst the witnesses as to what constitutes an “original” painting and who can be considered an “artist.” *The Oxford English Dictionary* defines the word “original” as “[o]f or pertaining to the origin, beginning, or earliest stage of something; that belonged at the beginning to the person or thing in question; that existed at first, or has existed from the first; primary, primitive; innate; initial, first, earliest.”<sup>8</sup> It also defines “original” as “[m]ade, composed, or done by the person himself (not imitated from another); first-hand.”<sup>9</sup> The word “artist” is defined as “[o]ne who practises the arts of design; one who seeks to express the beautiful in visible form. In this sense sometimes taken to include sculptors, engravers, and architects; but popularly, and in the most usual current acceptation of the word, restricted to: One who cultivates the art of painting as a profession.”<sup>10</sup> On the basis of these definitions and the evidence presented during the hearing, the Tribunal is of the view that the goods in issue are original paintings by artists. The evidence shows that the pub signs are hand-painted by artists themselves. Although the artists who paint the pub signs or pictorials, in many cases, may not be sophisticated or professional artists, in the Tribunal’s view, they can still be considered artists.

The Tribunal, therefore, finds that the goods in issue are named in heading No. 97.01 and, more particularly, under tariff item No. 9701.10.10 and that they should be classified thereunder.

Consequently, the appeal is allowed.

Raynald Guay  
Raynald Guay  
Presiding Member

Arthur B. Trudeau  
Arthur B. Trudeau  
Member

Desmond Hallissey  
Desmond Hallissey  
Member

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8. *Supra* note 5, Vol. X at 933-34.

9. *Ibid.*

10. *Supra* note 5, Vol. I at 669.