

Ottawa, Tuesday, March 19, 1996

**Appeal No. AP-95-080**

IN THE MATTER OF an appeal heard on November 22, 1995,  
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 June 6, 1995, with respect to a request for  
re-determination under section 63 of the *Customs Act*.

**BETWEEN**

**THINKWAY TRADING CORPORATION**

**Appellant**

**AND**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

**DECISION OF THE TRIBUNAL**

The appeal is dismissed.

Lise Bergeron  
Lise Bergeron  
Presiding Member

Arthur B. Trudeau  
Arthur B. Trudeau  
Member

Desmond Hallissey  
Desmond Hallissey  
Member

Michel P. Granger  
Michel P. Granger  
Secretary

**UNOFFICIAL SUMMARY**

**Appeal No. AP-95-080**

**THINKWAY TRADING CORPORATION**

**Appellant**

**and**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

*The issue in this appeal is whether the Halloween costumes imported by the appellant are properly classified under tariff item No. 6114.30.00 as other garments, knitted or crocheted, of man-made fibres, as determined by the respondent, or should be classified under tariff item No. 9505.90.90 as other festive, carnival or other entertainment articles, as claimed by the appellant.*

**HELD:** *The appeal is dismissed. Pursuant to Note 1(e) to Chapter 95 of Schedule I to the Customs Tariff, this chapter does not cover “[s]ports clothing or fancy dress, of textiles, of Chapter 61 or 62.” The term “fancy dress” is a specific phrase with its own particular meaning. For instance, The Oxford English Dictionary defines this term as meaning “[a] costume arranged according to the wearer’s fancy, usually representing some fictitious or historical character.” In light of the nature of the goods in issue, the Tribunal is of the view that these costumes are arranged or made to suit the wearer’s fancy to represent fictitious characters. As indicated during the hearing, the imported costumes are of man-made material and are washable. The goods in issue are properly classified under tariff item No. 6114.30.00 as other garments, knitted or crocheted, of man-made fibres.*

*Place of Hearing: Ottawa, Ontario*  
*Date of Hearing: November 22, 1995*  
*Date of Decision: March 19, 1996*

*Tribunal Members: Lise Bergeron, Presiding Member*  
*Arthur B. Trudeau, Member*  
*Desmond Hallissey, Member*

*Counsel for the Tribunal: Robert Desjardins*

*Clerk of the Tribunal: Anne Jamieson*

*Appearances: Robert Robson, for the appellant*  
*Janet Ozembloski, for the respondent*

**Appeal No. AP-95-080**

**THINKWAY TRADING CORPORATION**

**Appellant**

**and**

**THE DEPUTY MINISTER OF NATIONAL REVENUE**

**Respondent**

TRIBUNAL: LISE BERGERON, Presiding Member  
ARTHUR B. TRUDEAU, Member  
DESMOND HALLISSEY, Member

**REASONS FOR DECISION**

This is an appeal under section 67 of the *Customs Act*<sup>1</sup> (the Act) from a decision of the Deputy Minister of National Revenue dated June 6, 1995, made under section 63 of the Act. The issue in this appeal is whether the Halloween costumes imported by the appellant are properly classified under tariff item No. 6114.30.00 of Schedule I to the *Customs Tariff*<sup>2</sup> as other garments, knitted or crocheted, of man-made fibres, as determined by the respondent, or should be classified under tariff item No. 9505.90.90 as other festive, carnival or other entertainment articles, as claimed by the appellant.

Mr. John Barton appeared as a witness on behalf of the appellant. Mr. Barton is Director, Marketing and Licensing, of Thinkway Trading Corporation. After underlining his long working experience in the “Halloween business,” i.e. selecting, buying, merchandising and advertising Halloween costumes and accessories, Mr. Barton addressed the question relating to the use of these costumes. The costumes are used (1) by children going outdoors on Halloween night and (2) by adults or teenagers going to in-house parties. In fact, due to a number of various factors, these costumes are increasingly worn by people for indoor events. The appellant sells Halloween costumes to various outlets, from Wal-Mart to bargain shops. As Halloween is classified by the major department stores as a seasonal event, the responsibility of buying the goods in issue falls upon the buyers of toys. The witness further indicated that, in his past experience, both the department dealing with toys and that dealing with sporting goods were separate from the clothing/fashion department.

As to the average imported value of the costumes in issue, Mr. Barton spoke of US \$3.00 to \$3.50. In the course of Mr. Barton’s testimony, numerous costumes were entered as exhibits, such as the “Adult Messenger of Fire” (Exhibit A-6) and the “Adult Prisoner” (Exhibit A-8). Finally, he told the Tribunal that all of these costumes, under Canadian law, must have fire-retardant and fire-resistant material.

During cross-examination, Mr. Barton told the Tribunal that the costumes in issue represent fantasy as well as real life situations. He also acknowledged, given the seasonal nature of the “Halloween business,” that the costumes could change from year to year. About 80 percent of all Halloween merchandise, whether it is costumes or pumpkin buckets, comes from the Orient. Mr. Barton further indicated that the “Halloween

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

business” has exploded dramatically, essentially due to the trend towards indoor parties. The witness could not answer affirmatively the question as to whether the costumes can be reused at times other than Halloween. In his view, the taste for change and the very low prices of the costumes mean that most people buy a different costume from one year to the next. He also agreed with counsel for the respondent that the costumes in issue are machine-washable and that polyester (a component of these costumes) is a knit fabric. Finally, with respect to the retail prices of the costumes, he mentioned that prices are very low (e.g. Wal-Mart’s \$9.99 for an adult costume).

Mr. Barton associated the term “fancy dress” with high-end clothing (e.g. a \$100-\$200 dress for his wife). He also told the Tribunal that such a term had no meaning whatsoever for the “Halloween business.”

In argument, the appellant’s representative referred to the definition of the adjective “fancy” given by The World Book Dictionary,<sup>3</sup> namely, “a fancy blouse, fancy trimming. SYN: elegant, fine. 2 requiring much skill.”<sup>4</sup> In his view, the costumes in issue are of a very simple construction with printed design. In addition, some of these costumes are not hemmed. One must analyze the construction of a tariff item in order to derive its meaning. As to heading No. 95.05, “Festive, carnival or other entertainment articles, including conjuring tricks and novelty jokes,” the representative submitted that the authors of the Explanatory Notes to the Harmonized Commodity Description and Coding System<sup>5</sup> (the Explanatory Notes) chose not to preclude all textile articles, but rather specified an exclusion for “fancy dress, of textiles” and sports clothing. All “dress, of textiles” could have been excluded; this was not the case. In his submission, the intention was to preclude expensive, fine or elaborate dress. As he argued, the mere fact that the “Halloween costumes” are made “of textiles” should not be sufficient to deny the classification of the goods in issue in heading No. 95.05.

Counsel for the respondent noted the appellant’s failure to show that the respondent had incorrectly classified the goods in issue. Furthermore, bearing in mind the relevant Explanatory Notes, she submitted that Chapter 95 of Schedule I to the *Customs Tariff* clearly does not cover “fancy dress, of textiles.” In her view, the issue before this Tribunal is a very narrow one: what is “fancy dress, of textiles”? In this connection, she provided the Tribunal with The Oxford English Dictionary<sup>6</sup> definition of the term “fancy dress,” i.e. “[a] costume arranged according to the wearer’s fancy, usually representing some fictitious or historical character.”<sup>7</sup> She argued that “fancy dress” is a concept or phrase that is specifically defined. In short, one should not consider the definition of the two words, “fancy” and “dress,” in a separate manner. The key is that “fancy dress” is an expression which should be viewed, along with the various definitions given by dictionaries, as a specific phrase. She argued that the term “fancy dress, of textiles” would certainly include the costumes in issue (these costumes are made of polyester). She also rejected the connection seen by the appellant between “fancy dress” and elaborate clothing such as a ball gown. In her mind, there exists no correlation between these goods.

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3. (Chicago: World Book, 1990).

4. *Ibid.* at 770.

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

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

7. *Ibid.* at 716.

Having reviewed the evidence and considered the arguments, the Tribunal is of the view that the appeal must be dismissed. When classifying goods, the application of Rule 1 of the General Rules for the Interpretation of the Harmonized System (General Rules) is of the utmost importance. It states that classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes. In addition, section 11 of the *Customs Tariff* requires that regard shall be had to any relevant Explanatory Notes. As mentioned by the Tribunal on numerous occasions, this section makes it mandatory for the Tribunal to have regard to the Explanatory Notes.<sup>8</sup>

Pursuant to Note 1(e) to Chapter 95 of Schedule I to the *Customs Tariff*, this chapter does not cover “[s]ports clothing or fancy dress, of textiles, of Chapter 61 or 62.” The Tribunal agrees with counsel for the respondent’s submission that the term “fancy dress” is a specific phrase with its own particular meaning. For instance, the Merriam-Webster’s Collegiate Dictionary<sup>9</sup> defines “fancy dress” as “a costume (as for a masquerade) chosen to suit the wearer’s fancy.<sup>10</sup>” The Oxford English Dictionary defines this term as meaning “[a] costume arranged according to the wearer’s fancy, usually representing some fictitious or historical character.” Incidentally, the Tribunal notes that the French version of Note 1(e) uses the word “*travestis*.” This word means, according to the Grand Larousse Universel,<sup>11</sup> “[v]êtement qui permet de se déguiser en un personnage<sup>12</sup>” ([translation] clothing that is used as a disguise in order to look like someone else).

In light of the nature of the goods in issue, the Tribunal is of the view that these costumes are arranged or made to suit the wearer’s fancy to represent fictitious characters. As acknowledged by Mr. Barton during cross-examination, albeit reluctantly, the costumes’ characters, e.g. clown, pirate, etc., represent fantasy.<sup>13</sup> Bearing in mind the foregoing, the Tribunal cannot ascribe to the term “fancy dress” the meaning submitted by the appellant; there is no connection between this term and elaborate or chic clothing.

Furthermore, the Tribunal has had regard to the relevant Explanatory Notes, namely, those to heading No. 95.05. This heading covers festive, carnival or other entertainment articles which, in view of their intended use, are generally made of non-durable material. The Tribunal agrees with counsel for the respondent’s submission that the Explanatory Notes reflect the intended scope of this heading by listing the type of goods contemplated, such as masks, false ears and noses, wigs and false beards. As aptly noted by counsel for the respondent in her brief, these goods are more indicative of face disguises than of actual clothing.

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8. See, for example, *Narco Canada Inc., Div. of North American Refractories Co. and North American Refractories Co. v. The Deputy Minister of National Revenue*, Appeal Nos. AP-94-016 and AP-94-109, December 7, 1994.

9. Tenth ed. (Springfield: Merriam-Webster, 1993).

10. *Ibid.* at 420.

11. (Paris: Librairie Larousse, 1991).

12. *Ibid.* at 10385.

13. Transcript of Public Hearing, November 22, 1995, at 27.

As indicated during the hearing, the costumes in issue are of man-made material and are washable. The goods in issue are properly classified under tariff item No. 6114.30.00 as other garments, knitted or crocheted, of man-made fibres.

Consequently, the appeal is dismissed.

Lise Bergeron  
Lise Bergeron  
Presiding Member

Arthur B. Trudeau  
Arthur B. Trudeau  
Member

Desmond Hallissey  
Desmond Hallissey  
Member