



Ottawa, Thursday, July 13, 2000

Appeal No. AP-96-050

IN THE MATTER OF an appeal made under section 67 of the
Customs Act, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF a motion by the appellant requesting
that the Tribunal remove the respondent's supplementary brief
from the record.

BETWEEN

TOMMY HILFIGER CANADA INC.

Appellant

AND

THE DEPUTY MINISTER OF NATIONAL REVENUE

FOR CUSTOMS AND EXCISE

Respondent

AND

GFT MODE CANADA INC.

Intervener

DECISION OF THE TRIBUNAL

The Tribunal orders that all briefs and aids to argument filed by the parties with the Tribunal prior to the date of this order be removed from the record. The Tribunal further orders that the parties file new, complete briefs with the Tribunal on dates to be designated by the Tribunal in the future.

Given this order, the motion is dismissed.

Pierre Gosselin

Pierre Gosselin
Presiding Member

Richard Lafontaine

Richard Lafontaine
Member

James A. Ogilvy

James A. Ogilvy
Member

Michel P. Granger

Michel P. Granger
Secretary

Appeal No. AP-96-050

TOMMY HILFIGER CANADA INC.

Appellant

AND

**THE DEPUTY MINISTER OF NATIONAL REVENUE
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Respondent

AND

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Intervener

TRIBUNAL: PIERRE GOSSELIN, Presiding Member
RICHARD LAFONTAINE, Member
JAMES A. OGILVY, Member

REASONS FOR DECISION

This is a preliminary motion in an appeal under section 67 of the *Customs Act*¹ from decisions of the Deputy Minister of National Revenue for Customs and Excise (now the Commissioner of the Canada Customs and Revenue Agency) dated April 12 and 23, 1996. In these decisions, the respondent determined that certain royalties, design fees, advertising fees and other assists, which were allegedly paid by the appellant to Tommy Hilfiger Licensing Inc. (THL) in respect of the importation of certain goods, were dutiable. In its appeal, the appellant requested that the Tribunal declare that the value for duty of the goods in issue is the sale price between the offshore manufacturers and the appellant; that the royalties are not dutiable; that the design fees and advertising fees are not dutiable; and that no duty is payable in respect of trimming, samples and fabric. The appellant filed confidential and public briefs on November 20, 1996, revised confidential and public briefs on July 30, 1998, and a supplementary public brief on September 17, 1999. The respondent filed a confidential brief on February 27, 1997, a public brief on March 17, 1997, and supplementary confidential and public briefs on November 19, 1999. The intervener filed a public aid to argument and a book of authorities on March 18, 1999.

On January 14, 2000, the appellant filed a motion requesting that the Tribunal: (1) remove the respondent's supplementary brief from the record; (2) in the alternative, remove certain paragraphs from the respondent's supplementary brief; (3) subsidiarily, issue an order that the respondent bear the onus of proof with regards to the issue of the licensor's alleged control over the vendors of the goods in issue; and (4) such further and other relief as the Tribunal deems just. On February 1, 2000, the respondent filed his response to the appellant's motion. On February 9, 2000, the intervener filed its reply.

On April 26, 2000, the Tribunal informed the parties that it had decided to postpone the hearing on the merits of the appeal, until such time as a decision is reached by the Supreme Court of Canada in *Mattel Canada v. Canada (DMNR)*.²

1. R.S.C. 1985 (2d Supp.), c. 1 [hereinafter Act].
2. Leave to appeal granted on March 16, 2000, 27174 [hereinafter *Mattel*].

ANALYSIS

The Tribunal notes that there are currently three sets of briefs filed by the appellant, two sets of briefs filed by the respondent as well as an aid to argument filed by the intervener on the record. The Tribunal is of the view that, following the Supreme Court of Canada's decision in *Mattel*, it will be necessary and of benefit to the Tribunal to afford the parties an opportunity to address that decision in written submissions. The Tribunal is also of the view that the filing of additional supplementary briefs to address the Supreme Court of Canada's decision in *Mattel* is not the most efficient or fair manner to proceed. It is the Tribunal's view that the parties' positions will not be clearly and effectively communicated by adding a further layer of argument to those already existing on the record.

In light of the Tribunal's jurisdiction to control its own procedure³ and in the interest of ensuring that the positions of the parties are clearly and effectively communicated to the Tribunal, the Tribunal orders that all briefs and aids to argument filed by the parties with the Tribunal, prior to the date of this order, be removed from the record. The Tribunal orders that the parties file new, complete briefs with the Tribunal on dates and under conditions to be designated by the Tribunal, once the Supreme Court of Canada has rendered its decision in *Mattel*. As a result of this order of the Tribunal, the Tribunal finds that the issues raised in the appellant's motion are, at this time, moot.

Consequently, the motion is dismissed.

Pierre Gosselin
Pierre Gosselin
Presiding Member

Richard Lafontaine
Richard Lafontaine
Member

James A. Ogilvy
James A. Ogilvy
Member

3. *GFT Mode Canada v. DMNR* (18 May 2000), AP-96-046 and AP-96-074 (CITT).