



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

A-570-504
Scope Inquiry
Public Document
IA/NME/9: AP

August 14, 2012

MEMORANDUM FOR: Gary Taverman
Senior Advisor
for Antidumping and Countervailing Duty Operations

FROM: James C. Doyle
Director, Office 9
for Antidumping and Countervailing Duty Operations

SUBJECT: Final Scope Ruling: Antidumping Duty Order on Petroleum Wax
Candles From the People's Republic of China ("PRC")

Summary

On June 11, 2012, FashionCraft-Excello, Inc. ("FashionCraft") filed a request for a scope ruling to determine whether its six candles are outside the scope of the antidumping duty order on petroleum wax candles from the PRC.¹ In accordance with 19 CFR 351.225(k)(1), we recommend that the Department of Commerce ("Department") find that FashionCraft's six candles are excluded from the scope of the Order.

Background

On August 2, 2011, the Department published the final results of its request for comments regarding the appropriate interpretation of the scope of the Order² ("Final Results Scope Clarification") and stated that it intended to apply the clarified interpretation to "all pending and future scope determinations involving the Order."³ On June 21, 2012, the National Candle Association ("NCA"), an association of domestic producers and petitioner in the investigation, filed comments.⁴

¹ See Antidumping Duty Order: Petroleum Wax Candles from the People's Republic of China, 51 FR 30686 (August 28, 1986) ("Order").

² See Petroleum Wax Candles From the People's Republic of China: Final Results of Request for Comments on the Scope of the Antidumping Duty Order, 76 FR 46277 (August 2, 2011), and accompanying Issues and Decision Memorandum ("Final Results Scope Clarification").

³ The scope reinterpretation project was designed to clarify, based on information from the record of the original investigation, the scope language in light of hundreds of scope rulings made under a variety of different criteria that evolved over the years. The project also had the result of making it clear exactly what kinds of products were to be included in, and excluded from, the scope.

⁴ See Comments on Scope Ruling Request of FashionCraft-Excello, Inc. Petroleum Wax Candles from the People's Republic of China, dated June 21, 2012 ("The NCA's Comments").



Product Description

FashionCraft submitted descriptions as well as pictures⁵ of the candles for which it requested a scope ruling:

1. King of the Jungle Candle (Item #9448)

This candle consists of a candle molded in the shape and color of a seated male lion wearing a crown. Fashion Craft argues that “a lion is manifestly an animal,” and the candle is readily identifiable as a lion, featuring a mane, a tail, and the facial elements of a lion.⁶ The candle measures 2.75” x 1.25.” FashionCraft further argues that the crown element has no bearing on the Department’s definition of a “figurine candle.”⁷

2. Queen of the Jungle Candle (Item #9456)

This candle consists of a candle molded in the shape of a seated female tiger colored pink wearing a gold and white crown. Fashion Craft argues that “a tiger is manifestly an animal,” and the candle is readily identifiable as a tiger, featuring black striping, a tail, and the facial elements of a tiger.⁸ The candle measures 2” x 1.25.” FashionCraft further argues that the crown and pink coloring have no bearing on the Department’s definition of a “figurine candle.”⁹

3. Monkey Candle (Item #9459)

This candle consists of a candle molded in the shape and colors of a seated smiling monkey holding a banana. Fashion Craft argues that “a monkey is manifestly an animal,” and the candle is readily identifiable as a monkey, with a pink face, brown body, and tufts of hair on top of its head.¹⁰ The candle measures 2” x 1.25.” FashionCraft further argues that the addition of the banana has no bearing on the Department’s definition of a “figurine candle.”¹¹

4. Blue Owl Candle (Item #9460) and Pink Owl Candle (Item #9461)

These candles consists of a candle molded in the shape of an owl, featuring a heart shape in the middle of its torso and colored blue (Item #9460) or white and pink (Item #9461). FashionCraft argues that owls are manifestly animals, and the candles are identifiable as owls, with tufts of feathers on the head, large eyes, beaks, wings, and talons. The candles measure 1.75” x 1.25.” FashionCraft further argues that the additions of the pink and blue colors and the heart shape have no bearing on the Department’s definition of a “figurine candle.”¹²

5. Duck Candle (Item #8209)

This candle consists of a candle molded in the shape and colors of a duck. FashionCraft argues that “a duck is manifestly an animal,” and the candle is identifiable as a duck, with a rounded orange beak, wings, and a tail.¹³ The candle measures 2” x 2.”¹⁴

⁵ See Letter from FashionCraft dated June 11, 2012 (“FashionCraft’s Scope Request”) at Exhibit A.

⁶ *Id.* at 3.

⁷ *Id.* at 3 and Exhibit A. We also note that the bottom portion of the lion, tiger, monkey and owl candles contains a slightly indented portion, in the same shape as the bottom of the candle, which is not painted. See Exhibit A.

⁸ *Id.* at 3.

⁹ *Id.* at 3 and Exhibit A.

¹⁰ *Id.* at 3-4.

¹¹ *Id.* at 3-4 and Exhibit A.

¹² *Id.* at 4 and Exhibit A.

¹³ *Id.* at 4.

FashionCraft's Scope Request

FashionCraft argues that in the Department's Final Results Scope Clarification, the Department found that the scope of the Order includes candles of any shape, with the exception of birthday candles, birthday numeral candles, utility candles, and figurine candles. The Department further defined figurine candles to be any candle in the shape of a human, animal, or deity.¹⁵

FashionCraft argues that each of its six candles meet the definition of figurine candles because they are in the shape of animals, and, therefore, are excluded from the Order. To further support its argument, FashionCraft cites to recent scope rulings regarding candles in the shape of animals that the Department found to be excluded.¹⁶ FashionCraft states that many of the animal candles which the Department found to be excluded "only vaguely represent the animals that they depict, often being whimsically styled and/or featuring colors not found in nature" and that many of the candles feature "animals with other items."¹⁷

The NCA's Comments

In the Final Results Scope Clarification, the Department narrowly defined "figurine" candle as an animal, human, or deity. FashionCraft's six candles appear to be recognizable as animals, taken in their entirety, in accordance with the Final Results Scope Clarification. Therefore, the NCA agrees that FashionCraft's six candles are excluded from the scope of the Order.

Legal Framework

The regulations governing the Department's scope determinations are found at 19 CFR 351.225. When a request for a scope ruling is filed, the Department examines the scope language of the order at issue and the description of the product contained in the scope-ruling request.¹⁸ Pursuant to the Department's regulations, the Department may also examine other information, including the description of the merchandise contained in the petition, the records from the investigations, and prior scope determinations made for the same product.¹⁹ If the Department determines that these sources are sufficient to decide the matter, it will issue a final scope ruling as to whether the merchandise is covered by an order. This determination may take place with or without a formal inquiry.

Conversely, where the descriptions of the merchandise are not dispositive, the Department will consider the five additional factors set forth at 19 CFR 351.225(k)(2). These criteria are: (1) the physical characteristics of the merchandise; (2) the expectations of the ultimate purchasers; (3) the ultimate use of the product; (4) the channels of trade in which the product is sold; and (5) the manner in which the product is advertised and displayed. The determination as to which analytical framework is most appropriate in any given scope inquiry is made on a case-by-case basis after consideration of all evidence before the Department.

¹⁴ Id. at 4 and Exhibit A.

¹⁵ Id. at 2.

¹⁶ Id. at 2 and Exhibit B.

¹⁷ Id. at 2.

¹⁸ See Walgreen Co. v. United States, 620 F.3d 1350, 1357 (Fed. Cir. 2010).

¹⁹ See 19 CFR 351.225(k)(1).

In this case, the Department has evaluated FashionCraft's request in accordance with 19 CFR 351.225(k)(1) and finds that the descriptions of the products contained in these sources are dispositive with respect to FashionCraft's candles. Therefore, for these candles, the Department finds it unnecessary to consider the additional factors set forth at 19 CFR 351.225(k)(2).

Analysis

Pursuant to the Final Results Scope Clarification, the Department found that record evidence best supports a scope interpretation where "figurine" is based on the definition of this term from the Webster's Online Dictionary: "1. {a} small carved or molded figure...2. A very small figure, whether human or of an animal; especially, one in terra cotta or the like; -- distinguished from statuette, which is applied to small figures in bronze, marble, etc."²⁰ Based on this definition, the Department found that the best description of a figurine candle is a candle that is in the shape of a human, animal, or deity.²¹

Therefore, the Department determined that the scope of the order should be interpreted as follows:

All petroleum wax candles (regardless of holiday/religious/special occasion-theme) are included within the scope of the order, with the exception of three petroleum wax candle types: birthday (and birthday numeral) candles, utility candles, and figurine candles.²²

* * *

Figurine candles are those that are in the shape of a human, animal, or deity.²³

With respect to FashionCraft's Scope Request, we find that FashionCraft's six candles are outside the scope of the Order in accordance with 19 CFR 351.225(k)(1), because the descriptions of the products contained in the petition, the initial investigation, final determinations of the Secretary (including prior scope rulings) and the Order are dispositive. Therefore, for these candles, the Department finds it unnecessary to consider the additional factors set forth in 19 CFR 351.225(k)(2).

A figurine candle is a candle in the shape of a human, animal, or deity. The Department finds that FashionCraft's six candles, taken in their entirety, are each in the shape of an animal (lion, tiger, monkey, owl and duck). Therefore, FashionCraft's six candles are excluded from the scope of the Order as figurine candles. This is also consistent with prior scope rulings on figurine candles, in which the Department affirmed its clear standard for the figurine candle exception: that the candle, taken in its entirety, must be in the shape of an animal, human or

²⁰ See Final Results Scope Clarification at Comment 3C.

²¹ Id.

²² Id. at Comment 1.

²³ Id. at Comment 3C.

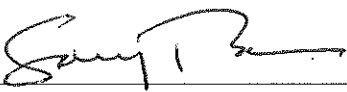
deity.²⁴ Thus, regardless of the color of the candles, or the stylized nature of the owls, or the inclusion of the crown or banana in the lion, tiger and monkey candles, and the indented, uncolored portion on the bottom of the lion, tiger, monkey and owl candles, taken in their entirety, each candle is in the shape of an animal and is, therefore, excluded from the scope of the Order.²⁵

Recommendation

Based on the preceding analysis, we recommend that the Department find that FashionCraft's "King of the Jungle Candle" (Item #9448), "Queen of the Jungle Candle" (Item #9456), "Monkey Candle" (Item #9459), "Blue Owl Candle" (Item #9460), "Pink Owl Candle" (Item #9461), and "Duck Candle" (Item #8209) are excluded from the scope of the Order.

If you agree, we will mail the attached letter to the interested parties, and will notify the United States Customs and Border Protection of our determination.

Agree _____ Disagree _____



Gary Taverman
Senior Advisor
for Antidumping and Countervailing Duty Operations

8/14/12

Date

²⁴ See Memorandum for Gary Taverman, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from James C. Doyle, Director AD/CVD Operations, Final Scope Rulings: Antidumping Duty Order on Petroleum Wax Candles from the People's Republic of China (PRC), dated August 5, 2011 and Memorandum for Gary Taverman, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from James C. Doyle, Director AD/CVD Operations, Final Scope Ruling: Antidumping Duty Order on Petroleum Wax Candles from the People's Republic of China (PRC), dated June 20, 2012.

²⁵ See Memorandum for Gary Taverman, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from James C. Doyle, Director AD/CVD Operations, Final Scope Ruling: Antidumping Duty Order on Petroleum Wax Candles from the People's Republic of China (PRC), dated June 20, 2012 at 7 n 51.

Fashioncraft
Product #: 9448



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Fashioncraft
Product #: 9456



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Fashioncraft
Product #: 9459



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Fashioncraft
Product #: 9460



Official Document: A-570-504 Barcode:3080685-01 SCO - Scope Inquiry 6/11/12 - 6/11/12



Fashioncraft
Product #: 9461

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Fashioncraft
Product #: 8209

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